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BENCH AND BAR

—(IN)—

CALIFORNIA.

1887

HISTORY, ANECDOTES, REMINISCENCES.

BY

OSCAR T. SHUCK,

("Crustilla" Trans.)

Price of this PART, \$2.00 per copy. PART II will be issued in December next, and PART III in March, 1888. PART II will contain Chapters on STEPHEN J. FIELD, S. C. HASTINGS, DAVID S. TERRY, JOHN S. HAGER, W. H. L. BARNES, HENRY E. HIGHTON, D. M. DELMAS, OSCAR L. SHAFER, JAMES MCM. SHAFER, RUFUS A. LOCKWOOD, EDMUND RANDOLPH, JOSEPH G. BALDWIN, JOSEPH W. WINANS and Interesting Miscellaneous.

OSCAR T. SHUCK,
8 Safe Deposit Building,
San Francisco.

September 24, 1887.

SAN FRANCISCO, CAL.

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1887.



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BY

OSCAR T. SHUCK,

(*"Scintilla juris"*)

OF THE SAN FRANCISCO BAR.

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TO THE

HON. S. C. HASTINGS,

Whom I have known the longest of them all—Chief Justice of our Supreme Court in 1850, and still exhibiting a sturdy manhood in 1887—I would regardfully inscribe this volume: counting it a happy circumstance that I may associate the only Chronicle of our BENCH AND BAR with the name of the honored founder of our only College of Law.

THE AUTHOR.

PREFACE.

The omission of this page might be noticed, as being an innovation. I publish my book because the story of the California Bar has never been told. In a free State, the profession of the law is the highway of ambition—a broad avenue, whence open fields of splendid possibility. Bar leaders walk before the universal eye. In older lands, a copious literature has made them its subject. Here, too, are masters of the Forum, to whom, with others gone before, many notable triumphs are to be credited. The meteoric McDougall, the eccentric Lockwood, the eloquent Hawks, the brilliant Byrne; Baker with a voice like Israfael; Randolph and Baldwin, noble remembrancers of the land and fame of Marshall; Felton and Murray, cut off in their manly pride and prime;—all have passed to their ultimate appeal. But their peers survive, and it is given me to tell the stirring story of the living and the dead.

TABLE OF CONTENTS.

CHAPTER I.

Edward D. Baker—Orator, Lawyer and Statesman—A Soldier in Three Wars—Great Criminal Trials—Baldwin's Witty Thrusts at the "Old Gray Eagle"—Gov. Low's Wager—Verdenal's Jest—Bert Harte's Enthusiasm—The Political Campaign of 1859—Brief and Brilliant Period in the Federal Senate—Death on the Battle Field—Celebrated Speeches—References to A. C. Monson, George Cadwalader, Edward Stanly, Jacob R. Snyder and Thos. Starr King.	13-20
---	-------

CHAPTER II.

Hall McAllister—The Veteran of the Bar—Scion of a Line of Lawyers—A Name Scattered Through Seventy Volumes of Reports—Personal Description—A Practice of Widest Range—Extraordinary Capacity for Work—Manner of Trying Cases—A Contrast with Edmund Randolph—Anecdotes—Judge Lake's Estimate of His "Muse"—Mr. Papy's Pleasantry.	21-27
---	-------

CHAPTER III.

John B. Felton—College Days—Early Partnership with Edward J. Pringle—Celebrated Cases—The Great Limantour Conspiracy—The Local Option Law—"Mortgage Tax"—The "City Slip" History—Felton's Enormous Fees—His Learning, Genial Nature and Sparkling Conversation—The Bulkhead Bill—Allusions to Professor C. C. Felton, Judge Lorenzo Sawyer, Judge T. W. Freelon, Levi Parsons, Gov. John G. Downey, and others.	28-37
---	-------

CHAPTER IV.

Joseph P. Hoge—Sage of his Party and Nestor of the Bar—His Record in Congress—A Colleague of Stephen A. Douglas and E. D. Baker—The Oregon Question—The Wilmot Proviso—The Galena Lead Mines—At the Bar in Three States—Humorous Notes—A Long Prosperity and a Green Old Age.	38-44
---	-------

CHAPTER V.

Samuel M. Wilson—Association with Joseph P. Hoge in Illinois and California—A Broad Practice and Princely Revenue—The Broderick Will Case—The Nitro-Glycerine Explosion, 1866—The Mining Debris Litigation—A Striking Instance of the Law's Delay—The Conflict Between State and United States Land Patents—A Seat on the Supreme Bench Declined—Meeting the Giants of the Eastern Bar.	45-54
---	-------

CHAPTER VI.

- Henry H. Byrne—A Picture of the Man and the Advocate—A Popular Idol But Distrustful of the Poor—Four Terms as District Attorney of San Francisco—Bouts with Baker and the Elder Foote—The Unfortunate Marriage with Matilda Heron—The Contest of the Actress for his Estate—Her Pathetic Story Told in her Own Words—Explanation of the Last Will—Amusing Anecdotes and Reminiscences. 55-65

CHAPTER VII.

- Lorenzo Sawyer—With McDougall in Illinois—In the Eldorado Mines in 1850—The Early Bar of Nevada County—A Remarkable Murder Case—Honors in San Francisco—A Long Tenure on the Bench—Judicial View of the Chinese Question—The Authorship of the Sole Trader Act—The Principles of Masonry—First Meeting with the Eccentric Lockwood—References to A. A. Sargent, Judge J. B. Crockett, Jno. R. McConnell, E. W. Roberts, E. F. W. Ellis, Stanton Buckner, C. H. S. Williams, Roderick N. Morrison, Frank M. Pixley and Tiburcio Parrott. 66-78

CHAPTER VIII.

- Solomon Heydenfeldt—An Oracle of Quiet Counsel—His Only Criminal Case—Senatorial Contest of 1851—On the Supreme Bench and Resignation Therefrom—Other Early Supreme Judges, Hugh C. Murray, Alexander Wells, Alexander Anderson and the Patriarch, Peter H. Burnett—Reminiscences and Anecdotes of John C. Fremont, T. Butler King, John B. Weller, Wilson Flint, Henry S. Foote, Tod Robinson, Newton Booth, Solomon A. Sharp, E. D. Wheeler and Edward Norton—The Roll of Governors of California. 79-91

CHAPTER IX.

- Niles Searls—A Career to Animate the Young and Poor—A Start at the Bottom of the Ladder—Unloading a River Steamboat in '49—"Waiting" for an Opportunity at the Bar—On the Bench of Nevada County—Settling the Law of Mining Claims and Water Rights—A Succession of Honors—Chief Justice of the Supreme Court—Personal Notes and Pleasantries. 92-96

CHAPTER X.

- A. P. Catlin, of Sacramento—An Historical Chapter—The Squatter Riots of 1850—Broderick's Struggle for the United States Senate—The Peck-Palmer Bribery Trial—Memorable Meeting Between E. D. Baker and C. H. S. Williams—Locating the State Capital—Attempts to extend the San Francisco City Front—The First Vigilance Committee of the Bay City—Trial of "The Hounds"—Impeachment of State Treasurer Bates—Long Litigation Over the Town of Folsom—Allusions to Prominent Men of Early Times. 97-112

CHAPTER XI.

- John T. Doyle—Some Interesting Cases in New York and California—The Suit of Gov. Price, of New Jersey, against Squire P. Dewey and Gen. E. D. Keyes—The Convivial Wit, Sam. Ward—History of the "Pious Fund" of the Catholic Church—A Notable Argument—Peter Donahue Brought to Terms—R. J. Vandewater Taken At His Word—A Judicious Friend of Young Men—The Story of Col. C. P. Eagan, United States Army—Some Interesting Personal Points. 112-122

CHAPTER XII.

- Alexander Campbell—A Reputation Early Won at the Brooklyn Bar—District Attorney of Kings County, New York—Another California Pioneer—Peculiar Controversy Over the Office of County Judge in San Francisco—A Dejected Grand Jury—References to Some Celebrated Cases—His Address in the Fair Murder Trial—Personal and Professional Traits. 123-129

CHAPTER XIII.

- A Chapter of Pleasantries—Wit and Humor of Bench and Bar—Sallies of Judge E. D. Wheeler—Judge Stanly's Order to "Burn That Petition"—An Elaborate Conundrum—Characteristic Conduct of a Jury of Lawyers—A Constable With More Pomp Than Discretion—Anecdotes and Recollections of Ogden Hoffman, A. P. Van Duzer, Solomon A. Sharp, J. B. Townsend, M. C. Blake, William M. Zabriskie, C. T. Ryland, Joshua W. Redman, William Daniels, J. B. Murdock, and others. 130-140

CHAPTER I.

Edward D. Baker—Orator, Lawyer and Statesman—A Soldier in Three Wars—Great Criminal Trials—Baldwin's Witty Thrusts at the "Old Gray Eagle"—Gov. Low's Wager—Verdenal's Jest—Bret Harte's Enthusiasm—The Political Campaign of 1859—Brief and Brilliant Period in the Federal Senate—Death on the Battle Field—Celebrated Speeches—References to A. C. Monson, George Cadwalader, Edward Stanly, Jacob R. Snyder and Thos. Starr King.

"Baker, you know *everything*—except law."

It was the elder Baldwin who spoke, a master mind in legal science. It was in the long ago, and he was rallying no less a man than Edward D. Baker, even then famed at the bar and in arms. Baker had held a brilliant place at the bar of Illinois, among those to whom he afterwards pointed (with a modesty that excluded himself) as "the pride and boast of the Mississippi Valley." He had won distinction in Congress, and as a soldier in the war with Mexico. Now, early in the "Fifties," having established himself in law practice in San Francisco he had gone to Sacramento, the capitol, on a professional visit. It was his first appearance in the interior of the State. While happiest in criminal cases, he was now enlisted in a civil trial. The plaintiff was the well-known lawyer, Joseph W. Winans, suing Hardenberg & Henarie, of the Orleans Hotel, to recover \$3,000 on a promissory note given for legal services. The defense was made by only one of the partners, who said the note was executed by the other after the partnership was dissolved. But the other partner testified to the contrary.

Baker was for the defense. He made a splendid effort to uphold a lost cause. In spite of the evidence he at least upheld his own fame for ingenuity and eloquence. But the plaintiff obtained a verdict, and the judgment thereon was affirmed on appeal. The trial below was before Hon. A. C. Monson and a jury. George Cadwalader, who had just come to the bar, was the lawyer who had the honor of the triumph. It was on this occasion that Joseph G. Baldwin, who had witnessed Baker's felicitous performance, accosted him with the opening words of this chapter. And the witty Southron followed them with a specimen of that infectious laughter that was his alone.

There was no political campaign pending just then, but the Sacramentans were bound to hear Baker outside the court room. They called him out on the lecture platform. He gave them "Books." He was full of his theme, and Baldwin was perhaps the most appreciative and most charmed of all his auditors. But the next day the Virginian had another sally for the lecturer

on "Books." "Baker," he said slowly, "you know everything about books—except law books."

The "Old Gray Eagle," as we fondly called him, soared close to the sun. His soul fed on poetry and fame, he was brilliant in the nation's eye, and "the path of glory led him to the grave." He was not very long at this bar, but his career here was cast in a crucial and eventful period. His triumphs and defeats were notable, and his figure looms up as the most striking in our legal annals.

He was born in London, England, in 1811. When five years old his parents came to the United States, bringing him with them. They came to this country, loving its institutions. They were teachers, educators, and making their home in Philadelphia when the echoes of the old bell of freedom yet lingered on the air, they opened a school and taught the youth of that city until the father's death, ten years later. The mother lived to a great age, surviving her distinguished son.

When in the fullness of time, the latter became a United States Senator, his first letter bearing the Senatorial frank was addressed to the aged mother. The Rev. Thomas H. Pearne, of Portland, Oregon, is authority for the statement that, on the way to the Post Office with the letter in hand, and conversing with a friend, the Senator remarked with fond pride that his mother, then more than eighty years old, was a woman of strong, cultivated mind; that she had often taken down his speeches in short-hand, which she wrote with elegance and rapidity; that she was a beautiful writer and still retained in vigor her mental faculties. Tears were in his eyes as he recounted her virtues and excellences.

At seventeen Baker went to Illinois, settling at Carrollton. He studied law and elocution. When he was twenty-one he entered the Black Hawk war, obtaining a Major's commission. He distinguished himself in that war. In 1845-6 he represented the Springfield district in Congress; and the old *Globe* will show that he was then gifted with that clearness of vision, and that charm of speech, which later so often fascinated the people of the New West. He was then the first orator of Illinois. He was a Whig, but, unlike most of the Northern Whigs, he favored the Mexican war. He gave up his seat in Congress to fight under Taylor. He was at Cerro Gordo, at the head of the Fourth Illinois Regiment, which regiment was raised by him. Without following him through the war, let it be said that at its close his State presented him with a sword.

In 1849 he went to Congress again—a Whig from a Democratic district. Governor Stanly, in his oration at Baker's funeral, said: "He had, if not all the ambition, the courage and genius of Julius Cæsar." Governor Stanly might have said he had, too, the ambition of Cæsar. Baker was among the most ambitious of men. He loved fame. His soul was ever athirst for glory.

I am tempted to believe that he favored the Mexican war, in opposition to his Whig friends, chiefly because it was *war*, and afforded him an opportunity to slake the burning thirst of his heart.

In 1851 we find Baker in a strange role—superintendent of construction of the Panama Railroad. He had a heavy force of men under him, and managed them with ability.

In June, 1852, Baker arrived in San Francisco, and until he departed for Oregon, eight years later, he practiced law here with distinguished brilliancy and success. In 1859 he ran for Congress on the Republican ticket. That was, without exception, the most interesting year in the political history of California. It was the year of Broderick's death—the year when the great Democratic party broke in two. Burch and Scott were the regular Buchanan administration candidates for Congress. The anti-Leocompton or Douglas candidates were Joseph C. McKibben of Sierra, and Judge Booker, of Stockton. The Republican candidates were Colonel Baker and P. H. Sibley. California then was strongly Democratic. By a tacit understanding between the Republicans and Douglas Democrats those two elements coalesced on candidates for Congress, and cast their united vote for Baker and McKibben. It was of no avail. Burch and Scott were elected by a heavy majority. But Baker made a magnificent canvass. From San Diego to Yreka his eloquent tongue was heard, and never before or since have our hills and plains echoed so marvelous a voice. The *Sacramento Union* employed short-hand reporters to accompany the orator, and to report his speeches verbatim. It was in that campaign that Baker made his great speech at Forest Hill, Placer County, known as his "Forest Hill" speech.

"I am here speaking in the mountains," were his opening words, "always in all lands favorable to the great idea of real liberty; always an inspiration to its defenders; always a fortress for its warriors." Henry Edgerton, himself an orator worthy of the name, who was with Baker at Forest Hill, declared he never heard so grand a speech. It may be found in full in the *Sacramento Union* of August 23, 1859.

It was in this campaign that I, a boyish worshiper of this magnetic orator, had the pleasure of grasping his warm hand for the first time? It was on the very day of election, and at the Third ward polls in Sacramento. The "Old Gray Eagle" had closed the fight by a magnificent speech in Sacramento the night before and was about to take the two o'clock P. M. boat for San Francisco, but visited in person the various polling places. Just as he was leaving the Third ward precinct he caught my eye and saw the tickets in my grasp. Lifting my hand with his he read the tickets which I held, and seeing thereon his own name, said: "The young and the old work together today."

Colonel Baker lost this fight. As he afterwards publicly declared, his

hopes and his heart were crushed. But in less than one year from the time of that Waterloo, he was a Senator of the United States! Oregon was his constituency. On the eve of his departure for Oregon, to capture a State of which he was not a resident, Governor Low bet him a suit of clothes that he would not succeed in getting to the United States Senate. When he came back triumphant, Governor Low was in the van of the great throng that welcomed him. "I'll take that suit of clothes, Low," was the first thing Baker said. He got the suit, but some people say that if he had lost the wager, his memory would not have proved so reliable.

While attention is turned to Oregon, I may tell this also, which I get from Mr. J. M. Verdenal. The latter, by the way, declares that Baker was the greatest orator he ever heard, and he has listened to Daniel S. Dickinson, Judah P. Benjamin, Robert G. Ingersoll, and other famous speakers. Mr. Verdenal's brother, D. F., now a leading newspaper correspondent in New York City, and who practiced law for a few years in San Francisco, pursued his legal studies in Baker's office. Being in Washington shortly after his old friend had become a member of the Federal Senate, he took occasion to pay his respects to "Baker of Oregon" in the senate chamber. "Young man," said the senator, grandly, "I hope that *you*, some day, may stand on this floor as a senator from a sovereign State." "Thank you," responded Verdenal, "I hope I will not have to emigrate to Oregon in order to get here."

Baker was very engaging on the lecture platform. Few, if any, of his efforts in that line, were reported with any attempt at fullness. Indeed, before 1859, short-hand was a very rare accomplishment in California. Notable among his lectures, besides that on "Books," were "The Sea," "The Plurality of Worlds" and "Socrates." These he treated with a glowing imagination, closing the last named with a noble tribute to TRUTH. At the Burns' Centennial, 1859, he was very happy.

Another fine effort was his oration at the dedication of Lone Mountain Cemetery (where his body rests), May 30, 1854. Starr King, in his touching address, six years later over Baker's open grave, made this allusion: "We have borne him now to the home of the dead, to the cemetery which, after fit services of prayer, he devoted *in a tender and thrilling speech*, to its hallowed purposes." Then Mr. King gave these lines from it: "Within these grounds public reverence and gratitude shall build the tombs of warriors and statesmen who have given all their lives and their best thoughts to their country."

Baker's most deliberate, thoughtful and polished production, was his oration at Broderick's funeral, September 18, 1859. It contains his stirring protest against dueling. Never was man so eloquently mourned as Broderick.

Baker worshipped the beautiful as ardently as Poe—the beautiful in art, in literature, in nature. His soul was full of poetry. One day, during the recess of a murder trial, in which he was about to speak for the prisoner, his

eye fell on one of those beautiful little fugitive poems that sometimes come and go, no one knows where. After reading it repeatedly and examining it thoughtfully, he showed it to a brother lawyer (the late Lewis Aldrich) saying: "Isn't that beautiful? I have been thinking how could I weave it into my speech this afternoon. I don't know where I can bring it in, but I'll find a place for it, if I hang my man."

Baker was counsel for the defence in the Snyder embezzlement case. Major J. R. Snyder came to California from Pennsylvania, his native State, several years before the Argonauts. He was in the first Constitutional Convention (1849) from the Sacramento district and in 1852-53 was a State Senator from San Francisco. He died on his Sonoma farm about 1877, leaving a valuable estate, including business property in San Francisco. While he was superintendent of the San Francisco Mint, he was tried in the Court of Sessions (T. W. Freelon, Presiding Judge), A. D. 1853, on a charge of embezzlement—it being asserted that there was a continuous shrinkage in the precious metals brought to the Mint. The defense claimed that the missing gold had gone, not where the woodbine twineth, not exactly up the spout, but—up the chimney, and had been wafted off in those golden clouds that are wont to circle above all mints, where they

"Become enthroned in upper air
And turn to sunbright glories there."

During the progress of the trial, the Mint whistle blew one day at twelve o'clock noon. "What is that?" said one lawyer to another. "It is Uncle Sam whistling for his money," was the reply.

Judge Freelon remarked to me that Baker's argument on that trial was the finest he ever heard him deliver. Baker had a faculty of understanding mechanical principles. Major Snyder did not; nor did more than a few of the witnesses. Baker must have spent several weeks in studying in detail the chemical operations of the Mint, for on the trial he showed that he knew more on this subject than anybody else. In his argument he turned his knowledge to good account, and also displayed his best powers of oratory and illustration. He acquitted his client, who was generally believed to be an honest man, but an incompetent manager. Judge Freelon also heard Baker in the Cora case; and thought while his speech in that case was more brilliant and eloquent and impassioned, yet, as a forensic effort, an argumentative display, a union of fact, argument and expression, the speech in behalf of Major Snyder was more creditable to him as a lawyer and advocate. Mention of the Cora case recalls the fact that Baker suffered a severe penalty for his brilliant defense in that celebrated trial. For a time he was socially ostracized. Society indicted him. It would never have visited such censure upon an advocate of ordinary powers. Cora had killed General Richardson, United States

Marshal, and his trial for the crime commenced January 8, 1856. He employed Colonel Baker to defend him, but public opinion insisted that the Colonel should leave the accused to his fate. He did his duty, and, in consequence, such was the inflamed state of the public mind, the eloquent old man suddenly found himself like a stranger in a strange land. Day after day the newspapers poured out their wrath upon his head. He stood his ground and "hung the jury." Before Cora could be put on trial the second time the Vigilance Committee hanged him. I will not say anything of that great popular uprising; I only touch the Cora trial because it concerns Baker's fame. It is hardly necessary, now, to argue that Baker had a clear right to defend the prisoner. The public opinion, which would tell a lawyer whom he may and whom he may not defend, would, if permitted, dictate the judgments of courts of justice.

But Baker may be quoted in his own vindication. In his defense of Cora before the jury he took occasion to say:

"The legal profession is, above all others, fearless of public opinion, candid and sympathetic. It has ever stood up against the tyranny of monarchs on the one hand, and the tyranny of public opinion on the other. And if, as the humblest among them, it becomes me to instance myself, I may say it with a bold heart—and I do say it with a bold heart—that there is not in all this world a wretch so humble, so guilty, so despairing, so torn with avenging furies, so pursued by the vengeance of the law, so hunted to cities of refuge, so fearful of life, so afraid of death—there is no wretch so deeply steeped in all the agonies of vice and misery and crime—that I would not have a heart to listen to his cry, and find a tongue to speak in his defense, though around his head all the fury of public opinion should gather, and rage, and roar, and roll, as the ocean rolls around the rock. And if I ever forget, if I ever deny, that highest duty of my profession, may God palsy this arm and hush this voice forever."

It is the judgment of many that Baker never stood forth as the orator so irresistibly as in the old American Theatre (where now stands the Halleck Block) on the night of October 27, 1860. Perhaps on that occasion he excited his audience to a pitch of enthusiasm and delight beyond all his other triumphs. One year before, he had left the State—defeated in a tremendous struggle, but hopeful and free of soul. He was now on his way from Oregon to Washington to take his seat as a Senator of the United States. He seemed inspired. The speech was fully reported and widely distributed. Delivered without notes, it was full of gems that will sparkle forever, as this:

"Here, then, long years ago, I took my stand by freedom, and where, in youth, my feet were planted, there my manhood and age shall march. And, for one, I am not ashamed of freedom. I know her power; I rejoice in her majesty; I walk beneath her banner; I glory in her strength. I have seen her struck down on a hundred chosen fields of battle. I have seen her friends fly from her. I have seen her foes gather around her. I have seen them bind her to the stake. I have seen them give her ashes to the winds, regathering them again that they might scatter them yet more widely. But when they turned to exult I have seen her again meet them, face to face, clad in complete steel, and brandishing in her strong right hand a flaming sword, red with insufferable light!"

The natural grace, the manly animation of the speaker, the way he suited the action to the word, were peculiarly his own and full of fascination. He appeared to brandish in his own "strong right hand," the "flaming sword red with insufferable light;" and his audience, tossed on the mountain waves of his eloquence, seemed to see him standing, unconquerable, the especial champion of Freedom, who, no more to be bound to the stake, was to exult in majesty and triumph forever. The daily papers, reporting the occasion, told of one individual in the audience, who, in the exuberance of his enthusiasm, leaped on the stage, and cheered as he waved the flag of freedom before the throng. This was no other than Bret Harte, then "a youth to fortune and to fame unknown."

During his short term in the Senate he delivered a few great speeches, in one of which occurred his oft-quoted tribute to the press. He also quickly won a high reputation for skill in debate, while his reply to Benjamin, in January, 1861, evidenced great logical power as well as majesty of expression.

It surprised the country when Baker left the Senate for the "tented field." It was thought an unnecessary sacrifice. But Baker was under an uncontrollable impulse. He once told Samuel B. Bell that eloquence was not his forte. Bell, in astonishment, said: "If you can beat yourself as an orator, in another direction, you are certainly an extraordinary man." "Well, think what you may," replied Baker, "my real forte is my power to command, rule and lead men. I feel that I can lead men anywhere." He raised a regiment, and went into this his third warfare as a Colonel. His career in the field was even shorter than his time in the Senate. He fell in his first fight, on the 21st day of October, 1861—gallantly, gloriously, and was commissioned Major-General after his death. Brilliant, restless and checkered life! These lines close a pathetic little poem, "To a Wave," written by him twelve years before his death:

"I, too, am a wave on a stormy sea;
I, too, am a wanderer, driven like thee;
I, too, am seeking a distant land,
To be lost and gone ere I reach the strand;
For the land I seek is a waveless shore,
And they who once reach it shall wander no more."

Baker's delivery was rapid, his voice melodious, his diction polished, his gesture free and full of grace. He had a splendid person, an eye full of fire, a noble forehead; and nose and mouth and chin were finely chiseled. His hair had long been very gray. On the platform his manner was marked by perpetual animation. He loved all arts, all sciences. His imagination was rich, his reading wide, his memory extraordinary. His countenance and bearing and his gray locks recalled the picture of Thorwaldsen, of whom it was said that when he moved in the midst of a crowd, it would separate as

if it felt the presence of a superior being. His disposition was the perfection of amiability. In his most heated forensic and political contests he was never betrayed into saying an unmanly thing of an adversary. He was a giant before a jury. So great were his gifts of oratory that his knowledge of law has been underestimated. But he was learned in the profession of his choice—a profession that opened so broad a field for the display of his varied powers.

Now and then, and here and there, has been heard the promise of a publication of Baker's Speeches, Lectures, etc., in book form. So engaging a volume may never appear. There has been issued, however, a "Sketch of the Life and Public Services of Edward D. Baker," by Joseph Wallace, (Springfield, Illinois, 1870). Those interested will find Baker's best political speeches in our libraries, in the files of the old Sacramento *Union* under dates of June 9-10; July 2-13-15; August 23-24; September 22-30—all in the year 1859; and October 26, and November 5, 1860. His "Atlantic Cable Oration," beautiful beyond eulogium, is the opening piece in my "California Scrap Book" (1869). His moving address at the burial of State Senator William I. Ferguson (who fell in a duel) September 16, 1858, his nobler "Broderick Oration," September 18, 1859, the imperishable words of Gen. James A. McDougall on the death of Baker, delivered in the United States Senate, Gov. Stanly's Oration at Baker's burial, and Thos. Starr King's brief but thoughtful address at the great man's newly opened grave, are all given in full in my "Representative Men of the Pacific" (1870). The address last referred to is a masterly assertion of the soul's immortal life. The declaration "Paul goes to an immense service still as an Apostle; Newton to reflect from grander heavens a vaster light," never fails to stir me when I see the preacher's marble tomb.

A broad street in San Francisco, not open at Baker's death but now lined with dwellings, bears his name. It will recall his fame when the cemetery where his mortality lies has long ceased to be the city of the dead and been added to the domain of throbbing life.

CHAPTER II.

Hall McAllister—The Veteran of the Bar—Scion of a Line of Lawyers—A Name Scattered Through Seventy Volumes of Reports—Personal Description—A Practice of Widest Range—Extraordinary Capacity for Work—Manner of Trying Cases—A Contrast with Edmund Randolph—Anecdotes—Judge Lake's Estimate of His "Muse"—Mr. Papy's Plesantry.

Glance at the date on the title-page of this volume, and reflect that Hall McAllister has been in continuous practice at the San Francisco Bar since the year 1849 ! If there have been some in whose variable radiance his steady light has been dimmed now and then, he has illustrated the happily expressed truth that the prolonged sunshine is better than a flash of lightning.

Through all this stretch of years he has kept faith with his profession in all its branches. The tide of his practice has known no ebb since its first swell in the middle of the century, and it has had an exceptionally extended range. Moreover, his indefatigable industry in preparation, his serene patience in the elucidation of intricate facts, the remarkably thorough way in which he tries his whole case, and the freedom with which he is consulted by lawyers generally, are qualities and considerations that lift him to the distinction of *primus inter pares*.

Is he as old in years as all this implies ? No. His step is light, his mind clear and strong as ever, and, besides doing a great deal of work at night, he is regularly in his office long before "office hours" open. He was born in 1826. A native of Georgia, of remote Scotch extraction, he comes of a line of American lawyers. His grandfather, Matthew McAllister, held under Washington the office of United States District Attorney for the southern district of Georgia. His father, Matthew Hall McAllister, held the same position by appointment of John Quincy Adams, and in 1855 became, by appointment of President Pierce, the first United States Circuit Judge of California.

Hall McAllister arrived in San Francisco in June, 1849, a year before his father came, and by way of the Straits of Magellan and Valparaiso. He took his place at this bar in August of that year, a novice among experienced men. He was a wary observer, in love with his calling, and entered the lists with that resolute purpose, which, if stubbornly adhered to, rarely fails to bring to the legal practitioner a fair measure of success.

That period of probation from which lawyers—even those of the brightest

parts and promise—seldom find exemption, was with Hall McAllister exceptionally brief. Several favorable circumstances conspired with his native bent and energy of character to cut his probation short, and to launch him auspiciously into the full tide of practice. Of an honorable and talented family, courted by society, enjoying the affectionate help of a father distinguished in his own profession, anxious and able to assist and advance him; of fine person, robust health, resolute purpose, vigorous mind and a fixed ambition, he stepped into the arena of professional life with the air of one who feels he has a hold upon the future, and with the almost absolute assurance of success. It is most true that he owed much to fortuitous circumstances; much to paternal promptings and guidance, "which nursed the tender thought to reason, and on reason build resolve—that column of true majesty in man;" but it is just as true that even without such aids he was born to be what he long ago became, one of the few unchallenged leaders of a large and able bar. He has never known what it is to be poor, or without friends, although he is nobody's hero, and has never wielded great wealth. But even if he had set forth upon his brilliant career without the advantages of competency, friendship and a liberal education, he would surely have arrived at the desired goal by slower marches but in good season. If we attribute his auspicious entry into professional life chiefly to good fortune, we must give him credit for the unsurpassed zeal and industry which have distinguished his progress. He might have builded on his father's fame, but instead thereof he laid his own foundations, and the superstructure which he has erected is entirely his own. He has a more vigorous and comprehensive legal mind than his father possessed.

The personal appearance of some men conveys a false idea of their ability and standing. Some really little fellows are unduly exalted in the mind of the stranger, by their Websterian heads, and countenances cast in the very mold of wisdom. Others, who possess abilities of the first order, attract attention only when deep emotion lights up their else expressionless faces, or when some great cause or occasion stirs their sluggish blood. But the features and presence of McAllister certainly deal honestly by the observer. His very build and bearing give to the beholder a correct suggestion of his capacity. The impression is not that of greatness or genius, but of strength. Whether we meet him in the street, in the court-room or in his office, we feel that we are in the presence of a strong man, to grapple with whom in his chosen calling must be serious business. We look upon him generally as a leader among men, and in the court-room, especially, we see in him the monarch of the local bar.

He has a large, square face, an unusual proportion of it below the eyes; a forehead neither full nor high, and lower than the average of men of ability, with no corrugations to betray the earnest study he concentrates upon his

causes; a head thick through and noticeable chiefly for its peculiar and irregular shape; the whole suggesting the seat of a practical mind, highly endowed with the powers of analysis and conclusion. His large and heavy frame lends to him the aspect of solidity and power, but his movements of body, notably lively for a man of his stature, militate somewhat against this impression. This alertness of movement corresponds with the action of his mind; and, like the latter, never runs into haste. Thoroughness and dispatch exercise joint and harmonious control over his whole being.

I have alluded to McAllister's custom of bringing out his case in all its strength and symmetry. In the trial of a cause his manner is, on the whole, admirable. He is cautious, but caution never fetters him. He is rapid, but is never carried beyond his object. Whether he goes over, around or through the chosen position of an adversary, he opens up a broad road, and leaves that position harmless behind him. One of his most noticeable habits is to take down with his own hand all the evidence of witnesses. He is eternally writing. St. Augustine said of that "most learned of the Romans," Marcus Terentius Varro, that he had read so much that we must feel astonished that he found time to write anything, and he wrote so much that we can scarcely believe that any one could find time to read all that he had composed. It may be said of McAllister, that he reads so much, it seems hardly possible he can write much; yet it would engross the time of almost any person to read, not what he composes, but what he writes down in court. What he writes would hardly prove as entertaining as the critical, philosophical and other treatises of Varro, for what drops from his pen is testimony. This, however interesting to him as bearing on his cause, would be dry, cold and barren enough to others.

This habit of taking down testimony, although the short-hand reporter is doing the same task more accurately, is very advantageous to an advocate. And it loses half its benefit when done by proxy, for the evidence is then the less impressed upon the advocate's mind. This duty is generally shirked, because it is hard work, and is unjustly regarded as merely manual. Successful lawyers usually turn aside from the clerical details of their business. In McAllister this habit of which we speak is in keeping with his unflagging industry.

The late Edmund Randolph was the opposite of McAllister in this as in some other respects. These two advocates, opposed in the trial of a cause, presented an interesting contrast. Randolph's wonderful memory was one of the most noticeable of his brilliant faculties. No matter how lengthy the trial, how numerous the witnesses, or how important the testimony, he disdained the use of notes, even though McAllister were opposed to him, urging his tireless pen through the whole trial.

When a motion was made in the Twelfth District Court to adjourn as a

mark of respect for Randolph's memory, the then Judge of that tribunal, called attention to this practice of the deceased, of trying his causes without taking notes, and urged the junior members of the bar to imitate the example as a means of strengthening the memory. It is to be hoped that this advice though given by a very excellent judge and lawyer, has not borne its legitimate fruit. Few men have remarkable memories; none have perfect memories. To strengthen the memory is commendable, and it is feasible, but to make it entirely reliable is hardly possible. Randolph could trust to this splendid faculty; but, generally, the advocate who imitates him will fall far short of his success. Whoso relies implicitly upon his memory is usually more showy than safe.

One of the best teachers in the public schools of this State, Andrew R. Jackson, then principal of the Sacramento High School, once told his scholars of a man who, many years previously, had been Clerk of the National House of Representatives, and who possessed a memory so extraordinary that he was able to write up accurately the minutes of the most busy and stormy session, without having taken notes. He did this day after day and week after week, until it was generally known how he got through with his work, when, although the fidelity of his journals could not be impeached, he was removed from his responsible trust. I am satisfied that my old preceptor believed this story, though he may never have investigated it more than I did. If it is true, the House of Representatives acted wisely in dismissing their brilliant and lazy servitor, because in his position he was unconsciously a dangerous man. McAllister has a good memory, but had he succeeded to that of Randolph he would yet adhere to his practice of taking copious notes. Without this practice he could try his causes well, but without it he does not seem to feel that he could try them thoroughly. This habit has so grown upon him that he sometimes goes through the motion of writing, even when listening intently to the court or opposing counsel.

In trying a jury cause, he sits usually facing the jury, and rarely rising from his chair. His table is covered with books and papers, and a boy is generally waiting to make fresh drafts upon his well-stocked library and his plethoric pigeon-holes. The court-room is for him a place of earnest work. He rests only when court takes a recess, and not often then. From the beginning to the end of the trial, he is writing, reading, questioning, objecting, arguing, appealing. The observer is constantly impressed with his industry and watchfulness.

In eliciting testimony, McAllister exhausts the information, without exhausting the patience of the witness. He never bores or insults. He never plays the tyrant over a timid witness, and never leads a rash one to his undoing, just for the love of the thing; never figures in any of the discreditable scenes in which lawyers and witnesses grapple in wordy combat.

McAllister, like every thoroughly trained lawyer, is politic, and therefore polite—alike courteous to court, counsel, jury and witness. To counsel associated with him in the trial of a cause he is uniformly deferential, but will not play second fiddle. He always leads his side. He is not troubled with the idea, which haunts so many legal small fry, that to be respectful to an adversary is to succumb to him, or that to listen decently to a postulate is to admit its soundness. He never sneers at a proposition, and never states one dogmatically. He meets the tyro with his hesitating step, and the veteran with his measured stride, with the same air of respect.

With all his dispatch, it is yet in the fullness of time, and, with a clear comprehension of his cause, that McAllister rises to address his familiar and favorite auditory—the jury. He is now in the house of his friends, and in speech and manner he shows that he is conscious of it. Having omitted nothing as regards introduction of evidence, so now he leaves nothing unsaid which the jury should hear. He speaks smoothly, exhaustively, yet avoids prolixity. The jury have witnessed his patient management, his shrewd generalship, the evidences of his careful preparation, and if, when he rises before them, they have not already recognized the fact that he knows his case to the utmost details, he soon convinces them of it. They appreciate his address to their reason, admire his methodical arrangement of facts, and find entertainment in his argument. Without betraying any effort to subject them to any personal influence; always respectful without being patronizing; ever earnest, but never inflamed; fluent, yet not verbose; easy in manner, yet a stranger to dramatic effect, he challenges respect for himself, even when he fails to elicit sympathy for his cause. His voice and physique, as well as the cast of his mind, are more suited to the argumentative than the pathetic style. At times, however, in capital cases, he approaches eloquence, drawing on the classics to give point and polish to his appeals. In quoting Shakespeare and the Bible he is quite happy. His elocutionary powers belong neither to the first nor the second order. Nothing can be said for his gesticulation; his metaphors are few and not striking, and, as to apostrophe, that perfect flower of Baker's oratory, he rarely calls it to his aid.

This Bar leader has no specialty. Great lawyers are often distinguished for specialties; too often the public assign them to specialties, when, in truth, they have none. McAllister has never suffered from this popular propensity. Not only has he no specialty, but the fact is acknowledged by all. Whether his case involves land titles, inheritance, patent right, private franchises, personal liberty, human life, or constitutional law, he is equal to the occasion. A prominent member of this bar—a former Judge of one of our District Courts*—once took occasion to bear public testimony to this fact.

*Address of E. D. Sawyer to the jury, in *Tyler vs. Holladay*, Twelfth District Court, April, 21, 1875. The parties to this suit were lawyers.

As a pleader—a writer of pleadings—our friend is careful and correct, evincing an intimate acquaintance with English forms and precedents. Although he probably does more work than any member of the California Bar, there is no one who takes things easier, or whom work hurts less. He owes this in a great measure to his powers of endurance—a splendid auxiliary to close mental application—and to his habit of investigating and methodizing at the same time. He is full of life and energy, has naturally a high temper, which he has under good control; seems to have schooled himself to be slow to anger; is not combative; has few intimates.

This advocate has one habit, which some commend and some condemn—that of interjecting into his arguments doggerel of his own manufacture. Perhaps it ought not to be condemned, because he generally turns it to account. It is at least better than punning, and an advocate perforce often indulges in pleasantry of some kind to cause a laugh and give surcease from the monotony of argument.

“A little nonsense now and then
Is relished by the wisest men.”

It may be said of McAllister's poetry, that it is more pleasing to the ear when spoken by its author in court than it would be to the eye if in print. At any rate I shall not print any of it. Occasionally he receives punishment for his temerity in this line—or rather in these lines. In his argument in the case of the Hibernia Savings and Loan Society vs. Mahoney et al., Fourth District Court, 1877, he let go some verses on which issue was joined by the opposing counsel, Judge Delos Lake. The latter, recalling the stereotyped expression “more truth than poetry,” declared that his adversary's verses contained “more poetry than truth,” and added that “that was not saying anything for the poetry.”

Among this advocate's minor resources is an unfailing vein of humor, not noteworthy for its richness, yet not to be omitted in this sketch. On one occasion he was called at the eleventh hour, into a case in which he had a colleague who was well prepared. While the latter was examining a witness, his memorandum of authorities fell under McAllister's eye, and was soon copied on a fresh sheet of paper, and, in a short time, a messenger laid the books on the table. The time for argument arriving, McAllister's colleague called on him to open, which he did by reading from his own books his associate's authorities. In closing, he said his associate would supplement what he had said by further argument. The “associate” arose, with serious front, and observed, poor man! that he had intended to address the court, but that Mr. McAllister had covered the ground so thoroughly that he deemed it unnecessary to add anything.

A certain lame lawyer had a certain lame client. The two resembled each other strongly in their awkward gait and clumsy locomotion. The

litigant, while looking for his attorney on the street one day, hobbled up to McAllister and asked: "Have you seen lawyer — going along this way?" "I never saw him go along any other way," was the reply.

Among the more important of the law causes in which McAllister has won renown worthy of special note was that of *Tompkins vs. Mahoney*, tried in San Francisco in the year 1865. The plaintiff, a lawyer, recovered judgment against the defendant for some \$30,000, including interest for legal services rendered during a period of several years. McAllister was his attorney, and his excellent address to the jury so pleased his client that the latter declared, in his enthusiasm, that he would have given one-half of the amount of the verdict for a verbatim copy of the speech. (The courts had no official stenographers at that time.)

Mr. McAllister married a lady of rare accomplishments, a daughter of the late Samuel Hermann, and has raised a large family. He owns a city residence, a beautiful summer home in Marin County, and is in comfortable circumstances. Reference to family recalls a scene which occurred in the early days in the United States Circuit Court, of which tribunal Hall's father was judge, Hall's brother was clerk, and Hall himself the chief practitioner. It happened one day, so goes the story, that as McAllister was presenting an *ex parte* motion, no one being in the court-room but the father and the two sons—judge, clerk and counselor—J. J. Papy, a well known attorney, now deceased, having business in the court, opened the court-room door, and, after a hasty glance, was about to withdraw, when the judge said: "Come in, Mr. Papy." The latter bowed his acknowledgments to the bench, and said: "Your honor will pardon me; I hate to intrude into a family meeting." The punctillious Mr. Papy then silently stole away, and the argument was resumed!

As I turn from this commanding figure, his "chariot rolls on fortune's wheel" as ever. Though his triumphs are many and enduring; his name scattered all over our seventy volumes of Supreme Court Reports, beginning with the case of *Payne vs. Pacific Mail Steamship Company* in volume I; he continues to work as might one who felt the sharp spur of want. Possessing a powerful constitution, mindful of the laws of health, and retaining all his first love for his profession, he is destined, in the ordinary course of nature, to hold his place at this bar for yet a considerable period. He is one of the men who labor through life. He will die in harness.

CHAPTER III.

John B. Felton—College Days—Early Partnership with Edward J. Pringle—Celebrated Cases—The Great Limantour Conspiracy—The Local Option Question—"Mortgage Tax"—The "City Slip" History—Felton's Enormous Fees—His Learning, Genial Nature and Sparkling Conversation—The Bulkhead Bill—Allusions to Professor C. C. Felton, Judge Lorenzo Sawyer, Judge T. W. Freelon, Levi Parsons, Gov. John G. Downey, and others.

John B. Felton's professional life began and ended in San Francisco. He was born in Saugus, Essex county, Massachusetts, in 1827, and died at his home in Oakland, May 2, 1877. His father was superintendent of an almshouse in Cambridge, and lived and died in very poor circumstances, leaving three sons, all of whom became men of mark. One was President of a railroad company in Pennsylvania. Another was the great scholar, lecturer and writer, C. C. Felton. The father managed to get this son into Harvard, and lived to see him attain great literary fame. C. C. Felton was connected with Harvard from the time she received him as a scholar until his death. After graduating he became successively a Latin tutor, a Greek tutor, Professor of Greek, Eliot Professor of Greek Literature, and President of the College. Dearly he loved "the bright clime of battle and of song" and was said to dwell in "the atmosphere of ancient thought." Some of the most instructive and entertaining pages of the New American Cyclopaedia are from his pen—the articles on Agassiz, Athens, Attica, Demosthenes, Euripides, Greece and Homer.

Professor Felton educated his brother, John B., who was many years his junior, and who upon graduating from Harvard in the class of 1847, obtained through the Professor's influence a position as Greek tutor. He had proved himself to be one of the best Greek scholars of his time. He did not long pursue this vocation, having determined to read law. Among his classmates at Harvard were E. R. Hoar and Horace Gray.

While at his law studies John B. Felton was sent by his brother, the Professor, to Paris, where he remained a year, studying the Civil Code, indulging in the amusements of the gay capital, and making himself thoroughly acquainted with the French language, which he ever after spoke with great ease and correctness. He also obtained a good knowledge of Spanish, having made up his mind to settle in San Francisco, and knowing this tongue would

be of service to him professionally, as it proved to be more than once—notably in the Limantour case, to be noticed.

It had been agreed at college between Felton and Mr. E. J. Pringle that they would commence the practice of law in partnership, in San Francisco. The two young men were in college together two years, Mr. Pringle being the elder and graduating two years before his friend. This was an alliance between Massachusetts and South Carolina. Mr. Pringle, who is still in active practice here, came to San Francisco by the Nicaragua route, arriving in December, 1853. Felton sailed around the Horn, in order that he might thoroughly acquaint himself with the structure of seagoing vessels and with nautical terms, hoping to profit by it in admiralty practice. He never had much admiralty practice, however. He arrived here in the spring of 1854, and immediately formed a partnership with Mr. Pringle and commenced law practice. Both gentlemen had been admitted to the bar in the East. Felton came to San Francisco a young man, but thoroughly equipped as a lawyer. He had large resources of mind, great breadth of comprehension, wonderful inventive power as applied to principles, and astonishing quickness and exactness of observation. The faculty was his of finding out what the law ought to be, and what, therefore, it is, unless fettered by technicalities; and the adroitness and subtlety to use technicalities when they suited his purpose; but he preferred broad, catholic views upon all questions of right and wrong between man and man.

The city slip litigation was what first brought Felton fame and fortune. A. C. Whitcomb, now a wealthy resident of Paris, was then a member of the firm, its style being Whitcomb, Pringle & Felton. How Felton's name seems out of place at the tail end of a firm! *This* firm seems to have stood on its head. The eastern part of San Francisco had been laid off into water lots of uniform size, 25x59.9-12, except a slip now embraced within Clay, Sacramento, Davis and East streets, which had been left open for purposes of navigation. In December, 1853, the city sold this slip at auction to many purchasers—in lots 25x59.9-12. There was a great boom in real estate then, and the property brought enormous prices; terms, twenty-five per cent cash, fifty per cent in sixty days, and twenty-five per cent in four months. When most of the purchasers had made the second payment, but before any had made the last, there was a sudden collapse in the real estate market, the lots in question depreciating some fifty per cent. One of the purchasers consulted Felton, to see if there was not some way to repair the loss. After examination, he replied that the purchasers could recover their money from the city; one after another of the unhappy men went to Felton, until his firm became attorneys of record for every purchaser. About one million of dollars was at stake. Felton discovered that the ordinance of the Board of Aldermen, under which the lots were sold, was passed by a majority of those present, but not

by a majority of a full Board, while the city charter declared that every ordinance must be passed by a majority of a full Board. One of the Board had resigned, leaving only seven members. The ordinance was passed by a vote of four against three. Felton took the ground that the ordinance was invalid, and consequently that the sale was void; and that the purchasers could recover their money. The pioneer case in the long litigation that followed was *The City of San Francisco vs. Hazen* (5 Cal., 169). The city sued Kelsey Hazen, a real estate operator, to recover on his promissory note, given for a deferred payment. Judge Lorenzo Sawyer was then City Attorney. The case was very elaborately argued in the Twelfth District Court, by Sawyer for the city and Felton for the defendant. The lower Court gave judgment for the city, but on appeal the Supreme Court sustained Felton's position and reversed the judgment, with costs. But, as Judge M. C. Blake once said from the bench: "No man knows the law; only the Supreme Court can tell it." And the Supreme Court sometimes takes back its decisions. In the second city slip suit—*Nathaniel Holland vs. the City of San Francisco* (7 Cal., 361) the plaintiff sought to recover back the purchase money. The city called Hoge & Wilson into the case, and the District Court decided for the plaintiff. The city appealed. In the Supreme Court Messrs. Hoge & Wilson made the point that the sale of the lots was valid, because the city had ratified it; that the ratification consisted in the city's receiving the money, and by a subsequent Board of Aldermen making appropriations of the same. This view prevailed in the Supreme Court which stated that its decision was not in conflict with the prior one in *The City vs. Hazen*, inasmuch as the second, or ratifying ordinance, had not been cited to the Court on the appeal in that case.

In the case of *McCracken vs. the City*, reported in 16 Cal., 591, Judge Field ably and patiently reviewed the whole question. He held that the law was not properly laid down in *Holland vs. The City*. (The opinion in the *Holland* case was by Judge Burnett, Judge Terry concurring and Judge Murray dissenting). Judge Field held that the subsequent ordinance was not a ratification of the sale—that the city had not conveyed any title to the purchasers—that the city still owned the property and must refund the sums collected. Judge Cope, in a separate opinion, held that a purchaser, in order to maintain an action for money had and received, must first make a reconveyance to the city. Acting upon this all the purchasers made deeds to the city and got judgment against the city for their several sums. The Legislature, on April 17, 1862, passed an act providing that the purchasers should take the lots at an appraised value, they to be credited with all payments made, and the city to issue to them its bonds for the amount of the difference between what they had paid and what the lots were worth. In pursuance of this law the Supervisors, in 1863, passed an ordinance, under which the lots

were sold to the original purchasers on these terms.

All of these cases were argued elaborately and with great power by Mr. Felton. His connection with them made him very widely known and created for him a vast constituency of clients.

The very extraordinary case of Limantour, in which Mr. Felton made a fine struggle against fate, will attract the attention of times remote, on account of the unparalleled audacity and magnitude of the plaintiff's claim and the criminal romance which invests it. Jose Yves Limantour was a Frenchman, who, before coming to California to prosecute the largest claim ever presented to our courts, had lived some twenty years in Mexico, where he was a government contractor and dealer in arms. In the pursuit of that business he had greatly prospered, fattening on the misfortunes of the country, which was generally convulsed with civil wars. In 1841 he visited California and remained a year at Yerba Buena, now San Francisco. He met here the traveler and author, Duflot de Mofras, who was his countryman, and who advised him to buy land on this peninsula. In 1844 he made a second visit, and a third in 1847, his business in the latter year being to supply arms to the California forces then feebly struggling to save their native land from the grasp of Uncle Sam. His vessel, loaded with munitions of war, was overhauled at San Pedro by the United States sloop-of-war Warren, under Commodore Biddle, but a search revealed nothing contraband. He had learned that he was pursued and had thrown his cargo into the sea. Being allowed to proceed, he returned to Mexico, where he remained five years. In November, 1852, he came again on a mission of peaceful conquest, not as the representative of a foreign government, but as his own ambassador; not *vi et armis*, but with pockets full of parchments wherewith to subject the richest, and most populous part of the country to his legal dominion. Congress, in 1851, had passed "An act to settle land claims in California," and had established at San Francisco a Land Commission to pass upon all land claims based on Mexican titles. It was provided that no claim should be heard that should not be presented before the third day of March, 1853. In February, 1853, Limantour filed with the Land Commission eight claims to land, which, by reason of their magnitude and the profound ignorance of everybody concerning them up to that time, created consternation throughout the city and the adjacent country affected.

Limantour claimed, First—Four square leagues, comprising over 15,000 acres, covering the city of San Francisco, except a strip off the northern end. Second—Yerba Buena, Alcatraz and the Farallones Islands and Tiburon Point, which commands the strait between Angel Island and the Marin main land. Third—The Laguna de Tache, covering eleven square leagues. Fourth—The tract of eleven square leagues called Lup Yomi. Fifth—Eighty square leagues near Cape Mendocino. Sixth—The vineyard of San Francisco

Solano. Seventh—Six square leagues called Cahuenga. Eighth—The Cienega de Gabilan of eleven square leagues, which embraced the city of Stockton. The claims aggregated about 620,000 acres, and a money value which exceeds to-day, and did even then, the combined wealth of all the railroad magnates of the United States. A protracted judicial inquiry followed. Limantour asserted that the lands claimed by him were granted him at different dates in the years 1843 and '44 by Governor Micheltoreno in satisfaction of and reward for his services to the Mexican government in advances of money and military supplies. The Land Commission confirmed the first and second claims—those covering the city of San Francisco and the islands named—and rejected the other six.

An appeal was taken to the United States District Court, where Edwin M. Stanton was specially employed to assist the United States District Attorney, and Whitcomb, Pringle & Felton appeared for Limantour. Pending this appeal, a card was published by one Augustus Jouan, agent of Limantour, who had accompanied the latter from Mexico to San Francisco, setting forth that Limantour had broken faith with him, and that for a consideration, he, Jouan, would make a revelation that would defeat the Limantour claims. The citizens "saw" him, and he revealed. He said Limantour had frequently told him that his grants were fabricated; he had himself, at Limantour's request, altered figures to reconcile dates; that Limantour had shown him a letter from Robin—Limantour's partner—in which Robin, in consequence of a quarrel with Limantour, threatened to expose the latter as a forger of title papers; that Francois Jacomet, a clerk of Limantour, had declared that one Letanneur wrote one of the grants in 1852—nine years after its alleged execution. He suggested that Jacomet be sent for. Jacomet was prevailed upon to come from Mexico, and, in 1856, he gave testimony corroborative of that of Jouan. Letanneur, who was here in the city "on business," was taken before the grand jury, and there testified that he had written one of the alleged grants.

Mr. Limantour (whose name should not be given the French pronunciation, but should be called in broad English, Lie-man-tour—that's the way most of our citizens pronounce it), was tapped on the shoulder by a federal officer and locked up. The grand jury indicted him for forgery and perjury. He gave bail in \$10,000. One of his friends was willing and able to qualify on his bond, but a second surety was requisite. Messrs. Whitcomb, Pringle & Felton persuaded Michael Reese to come to the rescue. But Michael required a written obligation of indemnity from Whitcomb, Pringle & Felton before he would sign the bond. So great was the faith of these gentlemen in the validity of their client's title, that they promptly agreed to indemnify Reese. This is good enough proof that the insinuation against their integrity in this cause was baseless. The Land Commission did not find out any

fraud. The United States Court *discovered* no fraud. The villainy of the claimant was uncovered by an accomplice. After it was revealed, it was clear enough. Everybody wondered that it was not sooner found out. John B. Felton enlisted his great abilities in the cause, because he honestly believed it to be a great cause and a good cause. Its fraudulency was brought to light by a mere accident, and the most astonished man in the community was John B. Felton. To quote the Hon. Jeremiah S. Black:

"The genuineness of Limantour's title was attested by the signature of a Mexican Secretary of State, who had previously been a foreign Minister, and was afterwards (even after the fraud was shown) a Judge of the Supreme Court. It was sworn to by a Mexican statesman, who had a reputation as high as any of his class, and it was certified under the hand of the President of the Republic in a communication addressed from the National Palace at Mexico to the Land Commissioners. But all these seeming marks of authenticity were placed there to cheat and defraud. It was afterwards demonstrated and solemnly adjudged that Bocanegra's attestation was a shameless falsehood; Castanares was perjured; and Arista, the President, was engaged with the others in a scandalous conspiracy to impose on the courts of the United States."

Limantour, after a few months absence, returned to San Francisco with additional "proofs," and had his cause tried. Mr. Felton felt reassured, and made out what was considered a perfect case. But in the very first fruition of hopes long deferred, it was hinted that the impression on the alleged "grant" should be compared with the government seal! This was done, and at once many differences were apparent. The end then came soon, and Limantour was revealed as a gigantic forger and conspirator. Mr. Felton declined to argue the case. Limantour succeeded in getting safely out of the country. The government brought suit on his former bail bond for \$10,000, and recovered judgment against Michael Reese and his co-surety for the amount. An appeal was taken to the United States Supreme Court, Messrs. Whitcomb, Pringle & Felton being the real parties interested, as they had contracted to hold Reese harmless. They succeeded in getting out of it, but paid Hon. Eugene Casserly \$1,000 for arguing the case at Washington, he then being a United States Senator. The Supreme Court held that Mr. Casserly's point was good—that the sureties were released from liability, because the United States District Court had once continued the Limantour criminal case against his consent! There is a lawyer in San Francisco who is in the habit of referring, now and then, to a Supreme Court decision as "a *beautiful* decision." This was a "beautiful" decision. It takes a lawyer, though, to detect the beauty. A man outside the profession might be excused for insisting that Uncle Sam was entitled to this \$10,000. He was not suffering for it, however. He could lose it better than Whitcomb, Pringle & Felton could.

It would be tedious to go over the list of celebrated causes with which Mr. Felton was connected. Two of the most important of them were the mortgage tax case and the local option case. On the first the court, in a model opinion by Judge McKinstry, took Mr. Felton's view—that to tax a mortgage and also the mortgaged property as though it were not incumbered, is double taxation, and in some cases may be manifold taxation. In the local option case the question was whether the law was constitutional, which provided that the people of any city, town or township might by vote decide whether spirituous liquors should be sold in such city, town, or township. In the Supreme Court S. W. Sanderson and Lloyd Baldwin appeared for the temperance men, and John B. Felton and W. H. Patterson for the other side. None of these survive. Sanderson (an ex-Supreme Judge) and Felton were the men who studied and argued the case. It was another great triumph for Felton. He contended that the law was in direct opposition to the natural rights of man. The constitution of California, said he, declares these rights to be inalienable. The rights of property, life, liberty and the pursuit of happiness precede government, and the only limitation of these rights is the rule that they shall not be used to the injury of others. A man has the right of using or abusing his own property, provided that in so doing he does no injury to another. His natural rights can only be bounded, limited or restricted by the natural rights of others. The acts which a man can be prohibited from exercising over himself or his property must be *directly* and *necessarily* injurious to others. He cannot be prevented from using or abusing his own property merely because other individuals, or the community, are *indirectly* injured thereby. The right to use wines, beers, liquors, etc., is a natural right of property. It can only be limited or restricted by the Legislature, and then only so far as the exercise of that right interferes directly with the rights of others. If a man uses these articles in excess—to his own injury only, and not to the injury of others—he is exercising the right of abusing his own property, and, though blameworthy, is not within the prohibitory power of the law. If, through such excess, he becomes dangerous to the lives or property of others, he then becomes amenable to the law. But, the article, the abuse of which has led to his thus becoming dangerous, cannot be taken away from others, who are capable of using it in a proper manner. When an article capable of proper and legitimate use is also capable of being used to excess, and thus produce misery, the simple possibility of its being used to excess does not prevent it from being property. The Legislature can regulate the use of it, but cannot prohibit the use of it. The Local Option law prohibited the use of liquors. It was, therefore, void.

Continuing Felton's argument, if a man takes his own life by eating or drinking things that are unhealthy, so long as he is the only one injured,

the law cannot reach him. There is no power in the Legislature, if he is sick, to lend its sanction to the prescription of the physician. Though assured that what he is about to eat is sure death to him, the law cannot interfere. His actions are a source of grief and woe to his family, the grief may be a source of disease or death to his father or mother, but society has no correctives to apply and no punishment to inflict. The injury, though great, is indirect. His opinions are so perverted and backed with so much plausibility that, through their influence, another loses his faith in all religion, becomes a profligate or murderer, yet he is not an accomplice in the crime or a sharer of the punishment.

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The minister who bought the place of Shakespeare, cut down the mulberry tree planted by the poet's own hands. The civilized world still execrates him for it. If Shakespeare had left the single copy of "Macbeth," or "Hamlet," or "Lear," to a friend, that friend could have destroyed it and caused incalculable damage to the world. The owners of the collections of Raphael, of Rubens and Titian, can destroy them and cause more evil than if an army were slaughtered. I may make such use of my land that property in the neighborhood will lose all its value. Yet the law is powerless. I may so conduct myself in my family that my wife and children cannot live with me. I may promulgate opinions which set society on fire. Yet, inasmuch as the injury resulting from all these things is not the *necessary* consequence, but only an indirect one—inasmuch as I have exercised a *natural* right without *directly* hurting another—I cannot be punished. I deserve punishment, but there is no one possesses the right to inflict it.

The natural rights that belong to the citizen cannot be taken from him without vesting absolutely despotic power in some one or somebody. Force, ignorance, the pride of caste, may ignore them, but, if suppressed, they will rend asunder any government. An able, bold judiciary must stand forever on the frontier which separates natural rights from civil rights. Spirituous liquors are property in all civilized countries. Their use is general. A very great class of persons make a good use of them. The Local Option law practically denies their use to the man of melancholy disposition, the man of impoverished blood, those enfeebled by disease and to the *temperate* man who can *use* the good things of this life. Why not regulate love? If I use ardent spirits discreetly, I do no harm to society, to my family or to myself. Why, then, interfere with me because another man uses them indiscreetly? It would be as reasonable to prohibit me from keeping horses, because my neighbor, a bad driver, may be killed by his; as reasonable to prohibit me from begetting children, because my neighbor is guilty of debauchery, adultery or rape; as reasonable to prohibit me from indulging in love, because an ill-regulated love in another leads to jealousy and crime. Love is the cause of more crime than drink.

I give the foregoing as a specimen of Felton's argumentative style, without reference to the moral aspect of the question.

Felton confined himself to civil practice. He probably took in larger fees than any other lawyer here. For their successful effort to break the Lick deed of trust, on behalf of Lick himself, he and Mr. T. H. Hittell received \$100,000. In the local option case he and Mr. Patterson received the same amount. He was the chosen counselor of Michael Reese and many other citizens who had great property interests. He paid little attention to politics, but on one occasion had aspirations for the United States Senate. It was in the campaign which resulted in the election of Newton Booth, as the exponent of a new, independent, shortlived party. The Republicans had settled upon Felton for Senator, in the event of their success. In that canvass Felton showed great power on the stump. He sometimes spoke for three hours or more without notes, and was most happy in thought and diction. He had a memorable controversy with Gov. Booth in that contest. The letters of the two rivals make fine reading. Chaste, classic, learned, trenchant—it would be difficult to surpass them in these respects.

Felton frequently lectured for charitable causes. He was a great friend of learning, and responded to the calls of schools and colleges for public addresses. He was regent of the State University from its foundation until his death. In October, 1867, he addressed the graduating class at the commencement exercises of Toland Medical College. He delivered the oration at the dedication of the San Francisco Mercantile Library. In October, 1868, he addressed the Grand Lodge of Masons. These and many other of his orations, besides quite a number of political speeches, were fully reported and have been preserved in immortal type. They are all alive with thought, and are strikingly graceful in expression.

He had the most expensive habits in the way of eating the most delicately cooked food that could be procured, and drinking freely of the rarest wines. When dining with friends away from home he always insisted on paying the whole bill—nobody else could spend a cent—and, as a little mark at once of his extravagance, goodnature and liberality, he always carried a pocket-full of fine cigars, that cost, at wholesale rates, not less than twenty-five cents apiece, which he distributed indiscriminately. He was a poor judge of men, and seemed to give little study to human nature. When he was a candidate for the United States Senate he had parlors at Whipple's St. George's Hotel, on Clay street, which were open to all men without distinction of politics, creed, race or color. The loafers and bummers thought a golden age had arrived. They made him think they were "making his fight," whereas, as the saying is, they did not control their own votes. Felton sent to those rooms, liquors and cigars which cost \$7,000.

A tippling friend met him on the street one day :

"They say, Felton, that we drink too much brandy and water."

Felton—They ought to be more discriminating. They should say that you drink too much brandy and I drink too much water.

Tippler—I guess we do drink too much, Felton.

Felton—Who authorized you to use the plural? Is it because you drink enough for two?

He once accompanied an acquaintance to see a great spiritualistic medium—a wise man from the East, who could answer all questions. Felton asked the medium where Beideman died. (J. C. Beideman, died in San Francisco, July 8, 1865, having been for some years the largest real estate holder in the city. He was a native of Philadelphia). The wise man said he could tell where Beideman died, if Felton would name three places, one of them to be the true place. Felton gave him San Francisco, Philadelphia, and his own native town, Saugus. The latter being possibly a name he never heard before, the luminary replied promptly, "He died at Saugus." Felton thanked him and withdrew. He often spoke of his visit to the oracle, and it afforded him great amusement to recur to it. He had religious views, and, like Henry Clay, hoped to become a Christian before he died. He leaned towards Unitarianism. A half bargain was once struck between him and a brother lawyer shortly after he arrived in San Francisco, that both should study for the ministry—Felton to become a Unitarian, and his friend an Episcopalian divine—and that they should pitch into each other from the pulpit, instead of at the bar.

Felton was a most forcible talker, never flowery or verbose. He was full of illustration, an adept at classic allusion, had a wide reach of information, had explored a vast domain in literature, was severe in logic, straightforward, direct. He was wonderfully quick in grasping the chief points of a case, and in argument was excited and vehement, borne alone on tremendous waves of enthusiasm.

With his peculiar temperament, it can hardly be said that he was industrious. Here he contrasted markedly with McAllister. He certainly was not fond of work, but he never tired of reading. He was fitful in exertion. His clients would sometimes pursue him day after day for weeks at a time, urging him to attend to their business. When he did take hold, he made up for lost time, frequently burning the midnight gas in his office. On such occasions he used stimulants freely.

This brilliant man was very generally beloved. Lively, genial, witty, generous to excess, his conversation "flavored with the essence of all good literatures," showing in every word and movement the well-bred gentleman, he was a most delightful companion, and those who enjoyed his friendship speak of him with the utmost tenderness and affection.

His bon mots were many. He said, probably, more good things than

any lawyer in the State. Seeing an Irish procession on Montgomery street, he called a friend's attention to the flag, and said: "That ought to be kept over the Caller's station in the big board of brokers." "Why?" "Behold the sham rock and liar!"

There was a certain lawyer of this bar who was afflicted with *cacoethes loquendi*. He delighted to talk to the dear people from the platform, and never let pass an opportunity to enlighten them, as far as he could, upon any subject—political, religious, moral, historic or esthetic. Mr. Felton met him on the street one day, and invited him to join him and a few acquaintances at dinner at a certain restaurant that evening. The "eloquent" speaker said he had to address the people that night at Platt's Hall, on the question: "What shall we do with our millionaires?" It was a theme of great public interest, and he hoped to see Mr. Felton among his auditors. "If you will excuse me, Mr. Felton," he added, "I had rather make a speech than eat the finest dinner ever cooked."

"And I, fond as I am of a good dinner, had rather starve to death than listen to you," was the retort. The intensity of Felton's repugnance can only be appreciated by those who remember how really fond he was of a fine dinner.

Judge T. W. Freelon, Judge Levi Parsons, John B. Felton, and a few others, consentaneous souls, once made up a merry mess of bachelors at Mme. Touchard's private boarding house. Felton's winning smile, when he joined his table companions, his exultant mirth and words of wit and wisdom, gave a peculiar charm to his presence, and made the dining hall the place of delightful daily reunion.

It was in 1860 that Parsons went to Sacramento to urge the passage by the legislature of his famous "Bulkhead bill." Felton accompanied him as his friend and legal adviser. The epicure always had reason to murmur at the Capital, but at that time some culinary Solomon had established there, at a convenient point, a first-class French restaurant. To this refreshing shelter would Parsons and Felton retreat every evening with their invited guests. Many times did they repair thither, sometimes hopeful, sometimes dejected, but always exhausted. The struggle in the legislature was long and stubbornly contested; the shock of battle was felt throughout the State. Doing effective and silent work each day, Parsons and Felton withdrew from the conflict with a new coterie of friends every night. San Francisco was anathematizing them, but they stood, "unmoved, enduring and immovable." Every day there was a great din in the metropolis, and every night there was a great dinner in the Capital. Judge Freelon met the two warriors in Sacramento in the heat of the strife, and they told him that a seat would be reserved for him at their table that night. "But I ought not to partake of your hospitality while I am opposed to your scheme," said the Judge. "It

doesn't matter," responded Felton. "You must come to-night, and every night during your stay in town. We never talk 'bulkhead' at the table." Judge Freelon concluded to go. He was so well entertained that he went every night until he left the Capital. But he did not hear the word "bulkhead" mentioned at the princely table of the great Bulkheader.

This famous bill proposed to grant to the San Francisco Dock and Wharf Company (composed of Dr. H. S. Gates, J. Mora Moss, John Nightingale, Abel Guy, John B. Felton, John Crane and Levi Parsons—the latter being the great head of the concern) the right to build a bulkhead, or sea wall, with the necessary piers, wharves and docks, upon the water line of 1851, with the right to collect dockage, wharfage and tolls; also to construct wharves and piers, projecting at right angles from the sea wall, to a length of 600 feet; also to appropriate and take possession of any franchise rights, lands or wharves belonging to the city, and also private property on making compensation.

The feeling of the people of San Francisco was reflected by the Governor, Hon. John G. Downey, whose veto of this bill made him the popular lion of the time. Governor Downey said, among other things, that from the time when the act should become a law, "all commercial intercourse with San Francisco would be effectually cut off, or be carried on upon such terms as the Dock and Wharf Company might dictate. The products of every branch of domestic industry as well as every article of foreign trade, all imports and exports, all vessels approaching the shore, and vehicles approaching the water, might be subjected to contribution. Foot passengers only, but not their baggage or effects, would be exempt from tribute. The right to construct the front streets, or to build a bulkhead, with the necessary piers, wharves and docks, and to fix and collect tolls, had been granted to the City and County of San Francisco, not in the same words adopted in this bill, yet in terms not less comprehensive and effectual. This bill attempts to divest and impair rights of property, which are to be regarded as contracts. It also empowers the company to take private property, not for any *public* use, but to facilitate a private enterprise. And it is plainly repugnant to the Federal Constitution and the Constitution of this State."

When the legislature had passed the Bulkhead bill, and Governor Downey had vetoed it, and the legislature had failed to pass it over the veto, and San Francisco was turning out en masse to do honor to the Governor, Judge Freelon (who, not long before, had made a public anti-Bulkhead speech) was marshal of the great procession which met His Excellency at the boat and escorted him to his hotel. The observed of all observers, he was observed most particularly by Felton and Parsons.

Felton's conversation was fresh, original and sparkling. His wit was abundant, and was set off by the most spontaneous, exuberant and contagious

laughter of his own. Herein, he closely resembled his distinguished father-in-law, Judge Joseph G. Baldwin. Baldwin was full of fun, and laughed uproariously at his own jokes. Baldwin and Felton never impaired the effect by their turbulent enjoyment of their own sayings. Their laughter seemed to follow naturally, and it was as refreshing to hear it as the wit that evoked it. It convulsed all who heard it. Of course Felton was intimate with Shakespeare. J. F. Bowman (who died in 1884), once entertained the members of the Bohemian Club with a disquisition on the authorship of the Shakespeare plays. Felton heard of it and asked Bowman if there was really any basis for the claim that Bacon was the true author. He was assured that there was a good deal to be said in favor of the Baconian theory. Felton and Bowman oystered together that night, and Felton listened with great interest to Bowman's recapitulation. In the discussion that ensued, Felton astonished Bowman by his thorough Shakespearean scholarship. He spoke with enthusiasm, and Bowman wondered if his friend had not made Shakespeare the special study of his life.

The profession, and the people heard with genuine sorrow of the death of this unselfish spirit, this master of the law. In the Supreme Court, Mr. Pringle, his old college mate, friend and partner, and his ardent admirer, Clark Churchill, since Attorney-General of Arizona, paid tender tribute to his memory. Eminent counsel made appropriate remarks in all the courts, and the judges responded with feeling. The bar memorial, addressed to the courts—a classical production—was from the prolific pen of Joseph W. Winans. I doubt if Mr. Winans ever wrote anything finer than this, of which I offer two extracts.

"To the profession of his choice he consecrated the supremest labors of his life. With him the law was no narrow system, fettered by precedent and cramped by forms, but a broad, comprehensive science, devised by the highest wisdom, for the proper direction and government of man in all the relations of society and State. Imbued with such a conception of its dignity and objects, he was singularly successful, through the soundness of his reasoning, the persuasion of his address, and the resistless power of his logic, in eliminating and bringing into practical enforcement those great principles of truth and right which constitute the theory of jurisprudence. It was the aim of his mental effort to convince the understanding, rather than inflame the passions. Possessing a faculty for accumulation almost unexampled in the practice of the law, he made no idol of his acquisitions, but what his toil had won his liberality dispensed with lavish hand. In his munificence he was a prodigal; in his hospitality, a prince.

"His life, though blasted in its prime, was fruitful of achievement, and his memory is fragrant with reminiscences of noble words and manly deeds. Contemplated as a patron of the arts and sciences, a promoter of public and private enterprises, and a philanthropist, he was in each capacity almost conspicuous; and severely will be felt the absence of that stimulating hand."

Of Felton, let me recall last what I love to recall best—his own noble utterance in closing the oration at the dedication of the Mercantile Library building, at San Francisco, June 18, 1868:

"And now," he said, "I dedicate this temple to the true mercantile spirit—to the spirit of true honesty, which, rejecting the letter of the written contract, looks to its spirit; which, disdaining all deceit, all mean and petty advantages, takes the just for its rule and guide; to the spirit of true equality, which, stripping off from man all accidental circumstances, respects and reverences him according to his merit; to the spirit of enterprise, whose field is the earth, the air, the sea, the sky, and all that in them is; to the spirit of munificence, that never tires in lavishing its treasures on all good objects, on the scientific expedition, on the library, the University, on the cause of religion, and on the soldier battling for the right; to the spirit of loyalty, that submits calmly and patiently to that great bond which holds society together—the law—which aims to reform, but never to resist or overthrow; to the spirit of patriotism, which follows with affection, pride, and devotion the daring mark of our country's flag; and to the spirit which worships God."

CHAPTER IV.

Joseph P. Hoge—Sage of his Party and Nestor of the Bar—His Record in Congress—A Colleague of Stephen A. Douglas and E. D. Baker—The Oregon Question—The Wilmot Proviso—The Galena Lead Mines—At the Bar in Three States—Humorous Notes—A Long Prosperity and a Green Old Age.

It would seem to imply a lack of respect to refer to this venerated Nestor of the San Francisco Bar as plain Mr. Hoge! But such he is, and no more. He is no Colonel at all, except by courtesy. He never had his "baptism of fire," as Napoleon III. styled it, or, to use the heroic speech of Caleb Cushing, he was never immersed in "the red baptism of the battlefield;" nor was he in the militia, even. "I tell you it is a great thing," said the versatile William H. Barnes (not William H. L. B.), in one of his capital temperance talks, "I tell you it is a great thing to be able to do something for your fellow man." It is very true. And the man who can make a Colonel, or a General, or a Governor of another by his own simple fiat, has not lived in vain. When the late Benjamin F. Washington, once collector of this port, and for so many years editor of the *Examiner*, arrived at Sacramento in 1850, after a weary tramp across the continent, as soon as he had washed himself and put on a clean shirt, he was ushered by General A. M. Winn (who later founded the order "Native Sons of the Golden West") into a little circle of pioneer upper tendom, where some half dozen ladies were trying to accommodate ten times as many gentlemen in the labyrinths of the dance. "Ladies and gentlemen," said the General, "let me introduce Colonel Washington, of Virginia." "That's the way I became Colonel," the Colonel told me in 1870. When Judge George W. Tyler concluded to make "General" Cobb he only spake the word, and it was done. I refer not to H. A. Cobb, the militia General, who, by the way, had his birth in the Azores Islands, but to Moses Gill Cobb, of Boston. Judge Tyler and M. G. Cobb were about forming a law partnership in Stockton. The former had been County Judge of San Joaquin, and having a title, determined that his partner should, for the sake of the firm, enjoy a like dignity. So he introduced him to all Stockton during the first week after his arrival as "my partner, General Cobb, gentlemen." "Yes, I made him a General," said the Judge to me in 1874.

After this fashion did Joseph Pendleton Hoge become a "Colonel," and his military creator was a Galena editor, who did the business about 1840. It seems that plain "Mr." is too common a title for a man of fame, even in a Republican-Democratic country. The tendency is to distinguish by some higher style those who have won our special regard. So it is generally accepted all over the Pacific slope that if J. P. Hoge is not a Colonel he ought to be. It seems entirely out of place to say "Mr." to him, or of him. No Judge on any bench would address the Colonel thus. Imagine Chief Justice Searls saying in open court, "Mr. Hoge, will you state that proposition again!"

Colonel Hoge is a native of the great State which has become a new mother of statesmen, and which has been doing so much for the country of late years in the way of supplying it with officeholders. He was born seventy-six years ago, according to our Great Register. He studied law and was admitted to the bar also in Ohio. He received what is called a classical education, graduating from Jefferson College, Pennsylvania. When he was about thirty years old he removed to the Prairie State, settling at Galena and there entering on his profession. He soon became popular and moderately prosperous. An inborn love of politics was his, which has ever since asserted itself, but which was never so strong as to require medical treatment. He has not been "discharged cured," because he has not needed curing. He has always desired to be United States Senator, but has never set his heart upon it.

The Colonel had not been long in Galena when the Democracy sent him to the Twenty-eighth Congress. In the campaign which preceded his election he made many brilliant stump speeches, and took his place among party leaders of the great West. At Washington his was a prominent figure, and he was returned to the Twenty-ninth Congress. His political period was 1843-47, and in the House of Representatives, during his four years of service were these eminent men: Hannibal Hamlin, Robert C. Winthrop, John Quincy Adams, John P. Hale, Hamilton Fish, Washington Hunt, Henry A. Wise, R. Barnwell Rhett, Howell Cobb, Alexander H. Stephens, Lynn Boyd (once Speaker), John W. Jones (once Speaker), Garrett Davis, Andrew Johnson, Cave Johnson, John B. Weller, Robert C. Schenck, Joshua R. Giddings, John Slidell, Robert Dale Owen, Thomas J. Henley (since prominent in California and father of the brilliant advocate, Barclay Henley), John A. McClernand, John Wentworth, Stephen A. Douglas, Jacob Thompson, David Wilmot, E. D. Baker, John A. Dix, Beverly Johnson; while in the Senate during the same period were: Levi Woodbury, Silas Wright, W. L. Dayton, Rufus Choate, James Buchanan, Wm. C. Rives, John J. Crittenden, Thos. H. Benton, Robert J., Walker, John C. Calhoun, Thos. Corwin and Lewis Cass.

The Congressional Globe discloses that on March 26, 1844, Col. Hoge presented the petition of L. W. Guiteau and fifty-six others, citizens of Stephenson county, Illinois, praying Congress to make appropriations for the immediate improvement of the Missouri and Upper Mississippi Rivers. The chief petitioner was the father of him who was destined to be President Garfield's assassin. On April 3, 1844, he spoke in favor of the bill introduced by him March 6, 1844, directing the sale by the government, of the reserved lead mines of Illinois, Missouri, Iowa and Wisconsin. In this debate he had a tilt with Cave Johnson, of Tennessee, afterwards Postmaster General under President Polk. He alluded to Johnson as "the Cerberus of the Treasury," when Cerberus turned upon him and charged him with indulging in ridicule and personalities, which he promptly disclaimed. Johnson "expressed his satisfaction at the explanation of the gentleman," but wanted to know what the gentleman meant by calling him the Cerberus of the Treasury. He continued that he had always gone as far as any man in liberality to settlers. If he had his way, he would not sell an acre of the public domain, but give the soil to those who settled upon it in good faith. He opposed the pending bill because he wanted to keep the lands out of the hands of speculators. He desired to see some other plan adopted for their disposition.

Col. Hoge did not reply. The bill was defeated, but on reconsideration was amended so as to make the minimum price of the lands five dollars per acre, and as thus amended passed the House by 92 to 71. But in the Senate, being referred to the Committee on Public Lands, it was there smothered.

On December 10, 1844, Colonel Hoge introduced another bill, directing the President of the United States to cause the reserved lead mines of Illinois, Iowa and Wisconsin to be exposed to sale. The bill was referred to the Committee on Public Lands. This bill shared the fate of its predecessor.

At the first session of the Twenty-ninth Congress, Dec. 19, 1845, Colonel Hoge introduced a similar bill, which was referred to the Committee on Public Lands. When the bill came up, June 1, 1846, an amendment making the minimum price ten dollars was offered and rejected. Another amendment making the minimum five dollars was then offered. Colonel Hoge spoke at length against the amendment. He said the settlers could not pay so much, and declared that the lands were chiefly valuable for agricultural purposes. On June 9, 1846, the bill was passed in the House with the five dollar amendment. It went to the Senate, and came back with another and longer amendment, and the House amended it further and finally passed it, in a shape obnoxious to those who favored the original bill.

On January 30, 1846, Colonel Hoge made a powerful and brilliant speech in the House of Representatives, on "The Oregon Question," which so long agitated Congress and the country. He took strong ground in favor of "Fifty-four Forty, or Fight." "I do not like," he said, "the patriotism which

counts the costs, which turns pale and trembles at the consequences ; which hesitates, falters and doubts when great national questions are to be decided, when great national interests are at stake." The question was on the resolution of Stephen A. Douglas, Colonel Hoge's colleague, declaring that a title to any part of the Oregon Territory south of 54 deg. 40 min. of north latitude is *not* open to compromise so as to surrender any part of said Territory. E. D. Baker, another colleague of Colonel Hoge's, although a Whig and English-born, came out bold and brilliant for "Fifty-four Forty, or Fight."

Colonel Hoge's speech, just alluded to, occupied fourteen columns of the *Congressional Globe*.

As everybody knows, we did not get Fifty-four Forty, and we did not fight. The country decreed a change of administration, calling to power a great party, one of whose rallying cries was, "Fifty-four Forty, or Fight ;" yet the President of its choice (I do not say it in criticism or censure) suggested to the British government a settlement upon the forty-ninth parallel as the dividing line. It is said that Mr. Buchanan, Mr. Polk's Secretary of State, felt bound to make this offer, because it had been made by Mr. Tyler before him. It was declined by Mr. Packenham, the British representative, whereupon Mr. Buchanan withdrew the offer, setting forth in a fine state paper the justice of the claim of the United States to the whole of the north-west Territory. Subsequently, the British government expressed its readiness to accept the forty-ninth parallel as the dividing line, if the offer of settlement were so modified as to secure to Great Britain the whole of Vancouver Island. This it announced as its ultimatum. President Polk submitted this proposition to the United States Senate, which advised its acceptance, and it was accepted. In June, 1846, a treaty was signed between the two governments, declaring the forty-ninth parallel to be the dividing line. And thus was surrendered the country's claim to a vast region which it had, with loud acclaim, declared its readiness to fight for ; an area as great in extent from north to south as that of the State of Oregon added to one-half of Washington Territory.

The famous "Wilmot Proviso" came before Congress while Colonel Hoge was a member of the lower House, and he voted for it. He has been censured therefor by many of his party. Owing to the subsequent events it has been a very long while since his vote on this measure has been criticised however. The "Wilmot Proviso" was one of the entering wedges which split the old Democratic party in two. On August 8, 1848, while the House was considering the bill to place \$3,000,000 in the hands of President Polk, to negotiate a peace with Mexico, Mr. David Wilmot, of Pennsylvania, a Democrat, but a Free Soiler, offered his celebrated amendment: "provided, that, as an express and fundamental condition to the acquisition of any territory from the Republic of Mexico by the United States, by virtue of any

treaty which may be negotiated between them, and to the use by the executive of the moneys herein appropriated, neither slavery nor involuntary servitude shall ever exist in any part of said territory, except for crime, whereof the party shall first be duly convicted." This was adopted in the House by a good majority, every Northern man voting for it, except two of Colonel Hoge's colleagues, Stephen A. Douglas and Jno. A. McClernand. It was being debated in the Senate when the hour arrived for the final adjournment of the session. When Congress next met, Mr. Wilmot again offered his proposition, and, after a long and heated struggle, which spread excitement and alarm throughout the country, the House again adopted it, and again it went to the Senate.

The Senate now struck out the Wilmot Proviso from the \$3,000,000 bill just mentioned and sent the bill back to the House. The House, in Committee of the Whole, March 3, 1847, again tacked on the proviso by a vote of 90 to 80. But, strange to say, right afterwards, in the House, after the report of the Committee of the Whole, the previous question being ordered, and recruits summoned, the proviso was defeated by 102 to 97. Colonel Hoge did not vote on this motion. Mr. Wilmot then moved to lay the bill on the table. This was negatived—ayes 87, noes 114. The bill then passed *without* the Wilmot proviso—ayes 115, noes 81, Hoge voting with the Free Soilers in the negative. Allen G. Thurman, of Ohio, Democrat, voted for the Free Soil proviso in Committee of the Whole and in the House, but when the House rejected it he voted for the Three Million bill, with the proviso left off.

It is a curious fact that, while Colonel Hoge, who has through thick and thin, steadfastly to date preserved his allegiance to the Democratic party, voted for this celebrated proposition, it was yet opposed by Stephen A. Douglas, General John A. McClernand and even Daniel Webster.

At the close of the second session of the Twenty-ninth Congress, in 1846, Colonel Hoge resumed law practice at Galena. He had kept his office open while in public life, and during his second term in Congress had formed a partnership with Mr. Samuel M. Wilson, who removed from Ohio to take charge of his business. The firm of Hoge and Wilson practiced in Galena until 1853, when the two partners came to San Francisco in company and continued their business association here until 1864, when they "parted friends," always to remain such.

Colonel Hoge's life in California has been a very active one, politically and professionally. He has been conspicuous in State conventions, and was Mr. Casserly's chief opponent when that gentleman was elected to the United States Senate in 1869. He is the acknowledged sage of his party. He was President of the Constitutional Convention of 1878, and also pre-

sided over the body of Fifteen Freeholders of San Francisco, which prepared the defeated charter of 1879.

In his profession the Colonel has been eminently successful, having amassed a fortune of \$100,000. In 1880 I found by consulting the Supreme Court reports, that, either by himself or in connection with his long-time partner, S. M. Wilson, he had appeared in the Supreme Court of this State oftener than any other member of the bar, with four exceptions.

In arguing a cause, Colonel Hoge is always animated, his countenance full of expression and his eyes full of speech. His ideas are expressed with wonderful clearness. He argues a law question like a master. Bench and bar go to him for instruction. He is restive, however, in argument. He doesn't like to be interrupted by counsel or even by the court.

In the matter of business location, this veteran has shown rare conservatism: he still looks out to the south and west from the same sunny offices in Montgomery Block where he has prepared his briefs for thirty-four years!

In personal appearance he is striking. Only his gray hairs tell of his age. He is very lively in his movements. So also, his conversation is vivacious, and readily turns into a channel of play. Considering his age, his alertness of mind and body are remarkable.

I must tell a story of the Colonel before I part with him. If it is not true, it is yet perfectly harmless, and I get it from a warm admirer of his. The Colonel, ever since his arrival in California, and for some years previous thereto, has been distinguished for his habitual neatness of dress and his absolute purity of linen. It was not always thus, they say. During the first years of his practice among the rough miners of Galena, he is represented to have been very loose and careless in this respect. It chanced that, about the year 1843, he visited Philadelphia, where he heard a legal argument by that advocate of national renown, David Paul Brown. Brown was very graceful and impressive in his delivery, and always studiously faultless in his attire. Some friends who had accompanied Colonel Hoge into court asked him, as they left the chamber, what he thought of the great lawyer's effort. The Colonel replied that he could make a better speech himself. There seemed to be something on his mind, but he said nothing more. Upon his return to Galena a striking change was observed in his exterior, and ever since then he has been one of the best dressed of men.

I will close this chapter with an incident which illustrates the Colonel's love of fun:

In the Supreme Court, in December, 1876, while an argument was being addressed to the bench, Colonel Hoge, Judge Cope, and another leading lawyer were carrying on a conversation in a subdued tone, but not subdued enough, and Chief Justice William T. Wallace concluded to subdue it altogether. Not caring to openly rebuke such eminent counsel, one of whom

had once occupied a seat on that very bench, the Chief Justice beckoned to the bailiff and whispered something in the ear of that functionary, who then softly approached the talking trio, and in his turn whispered to each : "Judge Wallace says stop talking." Colonel Hoge, who was the last to hear the gentle command, straightened up in his chair, motioned the bailiff back and said to him, in a tone just loud enough to be heard by his fellow culprits : "You tell Chief Justice Wallace to — — —." The bailiff reddened up, glanced hastily at the Chief Justice, then, with a bewildered expression, moved to his regular station. There, for some time, he seemed lost in deep thought. Suddenly he brightened, and turned his eyes toward Colonel Hoge, with a look which plainly said : "May be you think I *won't* tell Judge Wallace?" Did he? I never heard ; but I hope he didn't.

CHAPTER V.

Samuel M. Wilson—Association With Joseph P. Hoge in Illinois and California—A Broad Practice and Princely Revenue—The Broderick Will Case—The Nitro-Glycerine Explosion, 1866—The Mining Debris Litigation—A Striking Instance of the Law's Delay—The Conflict Between State and United States Land Patents—A Seat on the Supreme Bench Declined—Meeting the Giants of the Eastern Bar.

As I turn to this bar leader, an observation of Prof. Max Muller recurs. It was in the address on Freedom before the Birmingham and Midland Institute, October 20, 1879: "If there is one among the leaders of English thought, who, by the elevation of his character and the calm composure of his mind, deserved the often misplaced title of 'Serene Highness,' it was, I think, John Stuart Mill." If there is one among the leaders of this bar, who, by the elevation of his character and the calm composure of his mind, deserves this title, it is Samuel Mountford Wilson. In him we behold no meteor of brief career, speeding along its dazzling track, but an orb of massive momentum, pursuing with stately motion an orbit well defined. Happily, as Starr King once said of the sun, "he has no French ambition for display." In him we see character,

"Constant as the northern star,
Of whose true, fixed and resting quality
There is no fellow in the firmament."

This gentleman was born in Steubenville, Ohio. When he placed his name on the San Francisco great register, June 2, 1866, he gave his age as 42 years—making him 63 in 1887. When he was four years old his father died. He attended Grove Academy a few years, but never received a college diploma, being compelled to maintain himself from the time he had the physical strength to do so. He read law in the office of General Samuel Stokely, a member of Congress from Ohio, pursuing Latin and other studies at the same time. After his admission he practiced at the bar in Steubenville a short time, when Colonel J. P. Hoge, who had a good law practice in Galena, Illinois, and who was then in Congress, invited him to Galena and offered him a partnership, which he accepted. This was in 1845. Colonel Hoge was thirteen years older than Mr. Wilson. They had known each other well in Ohio, where Colonel Hoge was also born, and where the Colonel's sister and Mr. Wilson's brother intermarried. While at Galena the District Attorney of the county resigned and Mr. Wilson was

appointed to fill the vacancy. The only criminal law business which he ever attended to, devolved upon him during his fragment of a term as District Attorney of Jo Daviess county. He never liked this branch of law practice.

Mr. Wilson first met at Galena the lady who became his wife. Having studied for his profession in the office of a Congressman, afterwards having effected a business partnership with a Congressman, it very curiously coincided that he should form a matrimonial alliance with the family of another M. C. His wife was a Missouri lady, daughter of John Scott, delegate to Congress from Missouri Territory, and the first Representative to Congress after the admission of Missouri as a State. Messrs. Hoge & Wilson remained in partnership in Galena until 1853, when they came together to San Francisco, closing their Galena business and continuing their partnership here. I do not recall another instance of such a far translation of an entire law firm at one time.

The old Galena firm held together in San Francisco, having offices in Montgomery Block and conducting a large business until in 1864, when it was "dissolved by mutual consent," over eighteen years after its formation. The old law partners have since steadily continued their friendship for each other, and each frequently takes counsel of the other in the conduct of important cases.

Upon the separation of Messrs. Hoge and Wilson the latter formed a partnership with his brother, David S. Wilson, which continued about one year and a half, when David S. removed to Iowa, where he was afterwards elected a Circuit Judge. In 1866, Mr. A. P. Crittenden joined Mr. Wilson, and the firm of Wilson & Crittenden continued until the death of Mr. Crittenden in 1870. From 1870 to 1874 Mr. Wilson had no partner, but retained Judge W. W. Cope to assist him in his business. In January 1874, Mr. Wilson and his second son, Russell J. Wilson, became associated in business, and the firm of Wilson & Wilson has since continued without change, other than the admission of another son, M. S. Wilson. Russell J. Wilson had been admitted to the bar by the California Supreme Court in October, 1873, and had not long before returned from Knox county, Ohio, a graduate of Kenyon College, from which college had graduated Judge David Davis, Judge Stanley Matthews, Henry Winter Davis, the peerless orator of Maryland, and many other men since prominent in the national councils.

Mr. Wilson has a larger income from his regular practice than is enjoyed by any other lawyer in California. He is attorney for a score of millionaires; also, for many of our most prosperous mining companies; for the Safe Deposit Company; for Wells, Fargo & Co., which corporation, by the way, is organized under the laws of Colorado; also, for the Bank of California, the original articles of incorporation of which he drew when the institution was located at the southwesterly corner of Washington and Battery streets, in

1864. He also frequently appears as attorney for the Central Pacific Railroad Company.

Mr. Wilson is a methodical, patient, tireless worker and investigator. With the aid of his sons he wields his immense practice without difficulty. While perfectly unassuming, he has the fullest confidence in his capacity, as may be inferred by his opposing, single-handed, as he has done, the giants of the eastern bar before the most august bench in the land. He equips himself in complete armor for every encounter. His library is well selected, and in utility and number of volumes is not exceeded by any private law library in the State. He has what is called a legal mind—a well balanced mind. He is a lawyer clear through, and makes law his constant study. He loves the science. He has a genius for work. His habits are excellent—his life blameless. He has a reflective cast of mind, a fine judgment, a vast fund of common sense. His success, therefore, is not at all surprising. Success was his destiny.

I have heard some good lawyers assert that Mr. Wilson was at his best before a jury, while others say his place is before the court. The truth is, he is good in either position, but not being a magnetic or eloquent speaker his jury addresses are not powerful appeals. His delivery is quiet and deliberate, his speech plain. He very rarely touches ornament, and, while always earnest does not often warm up. Simple in his tastes and dress, free from haughtiness and affectation, he yet possesses a more magisterial air than any bar leader here. He enjoys the unqualified respect of the entire bench and bar. Both in and out of court you recognize in him the thoughtful counselor and well bred gentleman. And the high esteem in which he is held by the profession is due not more to his legal ability than to the uniform gentility which marks his treatment of his brethren.

It would be tedious to briefly glance at one-half of the more important causes in which Mr. Wilson has appeared at this bar. In the mortgage tax cases, the Beale street cases, the New City Hall case, the case of Sill vs. Reese, the Black will contest, and many others which excited deep interest in the public mind, he was conspicuous, and generally led the successful side. The case of Cunningham vs. Ashley *et. al.*, tried here at an early day, involved the title to the lot of land on which Platt's Hall stands. The plaintiff was D. O. Mills' father-in-law, who built and owned the Nucleus Building. The defendants were Delos R. Ashley and Jesse D. Carr, the latter now a wealthy farmer in Monterey county, and Ashley afterwards becoming State Treasurer of California and Member of Congress from Nevada. Mr. Wilson was for Cunningham, and prevailed over John B. Felton, D. P. Barstow and John Garber. The case of Porter vs. Woodward, *et. al.* was brought to recover a part of Woodward's Gardens and adjacent grounds of large area. There were many defendants and some twenty-five attorneys appeared on their

behalf, but the defense was chiefly conducted by Messrs. Wilson and J. R. Jarboe. The plaintiff's attorneys were William H. Patterson and B. S. Brooks. The case was ably contested and was taken to the Supreme Court. The defendants were successful in the District Court and on appeal.

Mr. Wilson has done well to eschew criminal practice. In the line of civil business, he keeps farther from the people, his name is less before the public eye, he is seen less, but he is felt more. He is not suited to the bustle and excitement of criminal trials. His deliberation and judicial cast of mind, keep him off the stage where guilt and justice meet. He is not strong in appealing to the feelings, the passions.

"He has not learned the mystery of awaking
Those chorded keys that soothe a sorrow's aching,
Giving the dumb heart voice, that else were breaking."

But in the wide domain, which he has been so industriously exploring for so many years, his capacity for investigation, his powers of argument, his poise of judgment, have found a congenial field. They impress his mind upon the jurisprudence of the State. In court Mr. Wilson is of easy bearing, but not courtly. He keeps full notes and never mistakes evidence. He uses his books with much discrimination. His authorities are in point. He talks forcibly, but not finely. He is cool, clear, eminently practical, concise, cogent, logical. His style is strictly argumentative; there is no hurry, no fretfulness, no impatience. Having improved his office hours he enters the court-room "strong in the assured sense of present skill, in the calm knowledge that the hours will bear good fruit."

In our Superior Court, Department 2, 1880—Calhoun Benham appearing for plaintiff, Mr. Wilson for defendant—a jury being impaneled, Benham wanted to amend his complaint and proceed with the trial. Mr. Wilson objected, and insisted that if the amendment was allowed the trial should be postponed. "I prepare my cases," he said. "I have analyzed this complaint. I know just what the plaintiff will be permitted to prove under each count (holding up a list of his authorities). If this amendment is allowed I may desire to demur; or I may move to strike out; or I may answer it; I *prepare* my cases, so that when I come into court I may be able to assist the court and jury."

John M. Burnett (*sotto voce*)—And to beat the other side.

The oldest short-hand reporter in California, the late A. J. Marsh, gave it as his opinion that Mr. Wilson was the most subtle cross-examiner he ever heard, except Durant, of Boston, a contemporary of Choate. Speaking of Choate, who was never properly reported, the reporter whom I have just named, stated that there were a dozen short-hand gentlemen in San Francisco who could report Choate's speeches verbatim. This he said in 1881.

Mr. Wilson has appeared in the Supreme Court of the United States

more frequently than any member of the California bar. One of the most interesting of the causes which took Mr. Wilson to the highest tribunal of the nation was the Broderick will case. Broderick, United States Senator from California, shot in a duel by Judge David S. Terry, September 12, 1859, died four days later, as Harry Byrne afterwards died, without wife, parents, children, brother or sister. A paper, purporting to be the last will of Broderick, dated at New York City, January 2, 1859, was admitted to probate in our Probate Court, October 8, 1860. Under his alleged will John A. McGlynn received \$10,000, and the remainder of the estate went to George Wilkes, of New York City. McGlynn, Wilkes and A. J. Butler were named executors. The estate, consisting chiefly of land now in the heart of San Francisco, was sold to several hundred purchasers in 1861, under order of court.

A little over eight years elapsed, when, on the 16th of December, 1869, a suit in equity was instituted in the United States Circuit Court in San Francisco to set aside the probate of Broderick's will and have the same declared a forgery, and to recover the estate. The complainants were John Kieley and Mary, his wife, George Wilson, and Ann, his wife, and Ellen Lynch, all residents of Sydney, New South Wales. The bill alleged that the three women named were daughters of Catherine, deceased sister of Broderick's father, Thomas, and were the only heirs at law. The complainants excused their long delay in asserting their rights by declaring that they lived in a remote and secluded region in Australia; that they were illiterate and did not hear of Broderick's death until eight years after the probate of his alleged will.

The high position of Broderick, the tragedy of his death, his great popularity at the time, and the extensive possessions he left behind him, drew wide attention to this contest in the Circuit Court. The history of this controversy is replete with interesting facts and incidents. Mr. Wilson appeared with other leading counsel in support of the genuineness of the will, and interposed a demurrer, which was sustained, and the complainant's bill was dismissed. The complainants appealed, securing the services of I. T. Williams, who made an oral argument, and S. H. Phillips, who filed a brief. In the Supreme Court of the United States Mr. Wilson was alone for the defendants. He contended that a court of equity had no jurisdiction of the subject matter of the suit, the same being vested exclusively in the San Francisco Probate Court, and that the action was barred by the several California statutes of limitations. He made other points, but upon these just stated he obtained an affirmation of the decree of the Circuit Court. Considering the interests involved in this controversy, and the large number of persons affected, Mr. Wilson must have received a princely fee.

The case of Meeks vs. Olpherts, Sharon *et. al.*, in which Mr. Wilson

appeared for the defendants, was won by him in the United States Circuit Court in this city; and the plaintiff appealing, the judgment was affirmed. Mr. Wilson had Montgomery Blair against him in the United States Supreme Court. The action was to recover possession of a hundred-vara lot back of the Palace Hotel. This case reveals a striking instance of the law's delay. George Harlan, who once owned the property in dispute, died at San Francisco, intestate, July 8, 1850. Henry C. Smith took charge of the estate, as administrator, August 19, 1850, and afterwards resigning, Benjamin Aspinall was appointed in his stead, June 15, 1855. Aspinall settled up and was discharged May 12, 1864, having meanwhile sold the lot in question, under order of the Probate Court. At the time of the decision by the United States Supreme Court in *Meeks vs. Olpherts* (100 U. S. Reports, 564), A. D. 1879, the Harlan estate was still in court, where it had been twenty-nine years, Joel Harlan and Lucien B. Huff being then administrators.

The defense in *Meeks vs. Olpherts* was the statute of limitations, and the United States Supreme Court held: (1) The statute of California which provides that no action for the recovery of real estate sold by order of a Probate Court, shall be maintained by any heir or other person claiming under the intestate, unless brought within three years after such sale, applies to the administrator who made the sale as well as to the heirs. (2) When by lapse of time the action is barred against him, it is also barred against them, because the right of possession is, by the law of California, in him and he represents their interests.

In the official report of this case Mr. Wilson is presented to the world in italicized type as *Mr. S. M. Watson*. But, perhaps, Mr. Wilson was not working for glory altogether. S. M. Watson did not get the fee.

The case of *Sherman vs. Buick* (93 U. S. Reports, 209), was the initial fight of the conflicts between State and Federal patents for lands in the sixteenth and thirty-sixth sections, under the act of Congress of March 3, 1853. This case was instituted in 1872, in the Third District Court, Santa Clara county, to recover possession of the southwest quarter of section thirty-six, township five south, range one east, Mount Diablo meridian. The plaintiff claimed under a United States patent, issued May 15, 1869, while the defendant relied upon a State patent, issued January 6, the same year. The act of Congress referred to having granted to the State the sixteenth and thirty-sixth sections of public lands within the State, provided (section seven) that the State should respect the claims of persons settling in such sections *before survey*, the State to select other lands in lieu of those so settled upon; while section six declared that no settlement should be protected unless made within one year after the passage of the act. Samuel J. Sherman had settled on the land in dispute December 20, 1862. The land was surveyed by the United States in August, 1866, and Sherman received his patent from the

general government, as before stated, May 15, 1869, four months after the State of California had issued its patent to D. S. K. Buick. Sherman offered to prove these facts in the District Court, but the court excluded the evidence as immaterial, holding that at the time of his settlement the title to the land was vested in the State. On appeal to the Supreme Court, the judgment in favor of Buick was affirmed by a unanimous bench (45 Cal., 656).

The case was taken to the Supreme Court of the United States. Mr. Wilson, with whom were associated Mr. P. Phillips and Mr. George A. Nourse, representing the twice defeated plaintiff, and Mr. Montgomery Blair, the defendant, the latter took the ground that the grant of sections sixteen and thirty-six was a grant *in presenti*, and that, no settlement on the lands in controversy having been made by the plaintiff at the date of the act, or within one year thereafter, they were not excepted from the grant. Of eighteen authorities cited by this eminent counsel, nine were from the California Supreme Court. Mr. Wilson contended that the title to sections sixteen and thirty-six did not vest in the State until they were marked out and defined by survey; that until that was done, the grant was in the nature of a float; that the settlement of Sherman, having been made before survey, was within the exception contained in the seventh section of the act of 1853; that, accordingly, the grant did not embrace the lands covered by that settlement, and the State patent was an absolute nullity. The opinion of the court (by Justice Miller) held that there was no real conflict between sections six and seven of the act of 1853—that the apparent conflict (one provision being that settlements shall be protected if made before survey, the other providing that no settlement shall be protected unless made within one year after the passage of the act) was reconciled “by holding to the natural construction of the language and the reasonable purpose of Congress by which the limitation of one year to the right of pre-emption, in the sixth section, is applicable alone to the *general body* of the public lands not granted away, and not excepted out of the operation of the pre-emption law of 1841, as the school lands were, by the very terms of the previous part of the section; while section seven is left to control the right of pre-emption to the school sections, as it purports to do.” (93 U. S. Reports, 209.)

The judgment of the Supreme Court of California was, therefore, reversed.

The case of *The Ivanhoe Mining Company vs. The Keystone Consolidated Mining Company* (102 U. S., 167) involved the title to all the real estate and mines of the flourishing mining town of Amador City, California. Here was another conflict between two patents, one issued by the State the other by the United States. Mr. Peter Van Clief and Mr. Oliver D. Barrett appeared for the plaintiff; Mr. Samuel M. Wilson and Mr. George A. Nourse for the defendant; Mr. Benjamin F. Butler for the State of California, and the Attorney General for the United States. Mr. Wilson was again successful, the court holding that the grant of the sixteenth and thirty-sixth sections

of land to California by act of Congress of March 3, 1853, did not cover mineral lands—that it was the settled policy of the general government to exclude mineral lands from all grants.

John Parrott, the well known San Francisco millionaire, brought suit against Wells, Fargo & Co., in the United States Circuit Court in San Francisco to recover damages for injuries to the granite structure on the north-westerly corner of Montgomery and California streets, caused by the explosion of a case of nitro-glycerine in the charge of that company on the sixteenth of April, 1866. The dangerous explosive was brought here with other express matter April 14th, 1866, from New York City, by way of Panama. On the wharf here it was discovered that the contents of the box, which resembled sweet oil, were leaking, and on the sixteenth, in accordance with custom, the box was carried to the building mentioned for examination in the presence of the agents of the express company and the Pacific Mail Steamship Company, that it might be ascertained, if possible, which company should repair the loss. An employee of the express company, under instructions, with mallet and chisel, was in the act of opening the box when the contents exploded, instantly killing all present, among them Mr. Knight, a brother-in-law of Governor Haight, and Mr. Webster, a well-known citizen, the two gentlemen being agents of the two companies. Supervisor Bell, of the eighth ward, who was passing the building on the California street side, was also killed instantly. The building was badly damaged, and windows were shattered in a large number of other edifices within a circuit of two blocks. It cost Wells, Fargo & Co. \$6,000 to repair the damages to the part of the building occupied by them, Parrott's suit being for injuries to other parts of the same structure. Mr. Wilson, appearing for Wells, Fargo & Co., won this case in the Circuit Court and also on appeal. In the United States Supreme Court he was alone on his side, and, as the reporter states, he "argued the case thoroughly, on the precedents English and American." He had for antagonists Mr. R. M. Corwine and Mr. Benjamin R. Curtis, the latter, in the judgment of many, the foremost lawyer of the country. The court held that there was no negligence on the part of either the steamship or express company, nor of any of their agents or employees—that they had no knowledge of the contents of the box, and no means of knowledge; that nitro-glycerine was not then known as an article of commerce; and that the companies named, as common carriers, were not bound to inquire concerning the contents of the box, having no reason to have their suspicions awakened.

Mr. Wilson was also on the prevailing side—for the defendants—in the case of McGarraghan vs. The New Idria Mining Company. In this case he was opposed by Montgomery Blair and Matthew H. Carpenter. He was leading counsel for the hydraulic mining companies in their great contest with the farming interests upon the debris question—a great contest, indeed, and

a protracted one, 1880-1886. Many farms had been ruined by the flow of "slickens" from the mines, and the farmers, combining, sought to have the miners enjoined from committing further injury of this nature. In such a conflict Mr. Wilson's usual good fortune could not attend him. The issue marked the end of the long domination of the mining interests over those of orchard, and vineyard, and farm.

The case of the Giant Powder Company against the Vulcan Powder Company involved the constitutionality of the patent laws, so far as the same are designed to extend or renew patent rights. On the trial before Judges Field and Sawyer, U. S. Circuit Court, Mr. Wilson raised the point that the time for which a patent is originally issued cannot be extended, and the point was sustained by both of the sitting Judges. Mr. M. A. Wheaton was associated with Mr. Wilson on this trial, while Mr. Causten Browne was opposed. Mr. Browne is a Boston lawyer of repute, author of an approved work on the Statute of Frauds. He came out from "the hub" with much promise and confidence, to measure swords with Wilson, but was badly wounded and his retreat was precipitate. This recalls a refreshing memory of the great New Almaden case, tried in the same court. Our Eastern friends sent out three of the greatest lawyers of the country to present one side of that case; *but they found our Randolph on the other!*

It is worthy of especial mention that of the many causes in which Mr. Wilson has appeared in the highest tribunal of the United States, he met defeat in but one. This was the case of Eureka Consolidated Mining Company vs. Richmond Mining Company—error to the Circuit Court of the United States for the State of Nevada. This was an action of ejectment for mining ground of great value. Having met the ablest lawyers of the East in the argument of great causes, it was remarkable that in the only case he lost in the United States Supreme Court, he should have been vanquished by an attorney of his own local bar. His adversary was Harry I. Thornton, who is represented to have made a magnificent argument. The Eureka-Richmond case is reported in the 103d volume of United States Reports, page 839.

Mr. Wilson has not been active in politics, but has several times been a member of local conventions. Governor Haight once tendered him a seat on the Supreme bench, and wrote him a letter, earnestly pressing him to don the ermine, but he declined. With his old partner, Colonel Hoge, he was a member of the body of Fifteen Freeholders of San Francisco who prepared the defeated charter of 1879, and also of the State Constitutional Convention of 1878. Of the latter body Colonel Hoge was president, and Mr. Wilson was Chairman of the Judiciary Committee. He refused to sign the new constitution. He rarely addresses the people. Among the few occasions when he has done so may be mentioned his Fourth of July oration at Sacramento in 1860, and his address at the laying of the corner-stone of the State Capital. His latest

production outside of his profession was also his best—his eulogy upon Samuel J. Tilden, before the State Democratic Club, at San Francisco, shortly after the statesman's death in 1886. This he had written out, and he read it with fine emphasis and effect before a large and select audience. It was excellent in thought and expression, and is preserved in pamphlet form.

It may be added, that Mr. Wilson has husbanded an ample competence, and owns one of the most valuable and commodious private residences in the city. He is of fine personal presence, of medium stature, with dark features and high forehead. Having raised a large family, and become a grand-father, he still seems to "wear the rose of youth upon him," and at three-score-and-three he securely holds the proud eminence which has long been his of right.

CHAPTER VI.

Henry H. Byrne—A Picture of The Man and the Advocate—A Popular Idol But Distrustful of the Poor—Four Terms as District Attorney of San Francisco—Bouts with Baker and the Elder Foote—The Unfortunate Marriage with Matilda Heron—The Contest of the Actress for his Estate—Her Pathetic Story Told in Her Own Words—Explanation of the Last Will—Amusing Anecdotes and Reminiscences.

Henry Herbert Byrne whose period at the San Francisco Bar covered the eventful years 1850-71, was born in New York City. His father was Irish and his mother English. He was well educated at a French Catholic college in Canada. Admitted to the bar in his native city, he came to San Francisco at the age of twenty-six, without money or reputation. He soon formed a partnership with T. W. Freelon, and during all his professional life afterward was associated with that gentleman, except when the latter was on the bench. Byrne was District Attorney of San Francisco, for two terms 1851-52, 1853-54 and also two terms, 1858-69, 1870-71. In that responsible office he brought many distinguished rogues to justice, some of whom "felt the halter draw." He won encomiums from bench, bar, the community and the press. He was an able, faithful and diligent minister of the people. He was known only as a criminal lawyer. It is to be wondered at that he accepted the District Attorneyship for his last two terms, well knowing the arduous duties of the place, and having since he first occupied the office attained considerable reputation and wealth.

The most important trial in which he appeared was that of Mrs. Fair, charged with the murder of the prominent lawyer, A. P. Crittenden. He was then District Attorney. The trial was opened March 27, and closed April 26, 1871. Byrne made the closing argument for the prosecution, consuming two days, and this was published in full by Marsh & Osbourne, the official shorthand reporters, with all the proceedings of the trial. It was certainly an admirable effort, a fine exhibition of his power of invective, his unimpeded flow of speech, his subtle reasoning, the precision of his ideas and his varied learning. It is full of interest and attractive for all classes of readers. His quotations were many, but not lengthy, and not unduly frequent, considering the great length of his speech. He was, however, corrected several times by Mr. Cook, his chief opponent, in statements of the evidence. To give edge to his

points, beauty to his periods and emphasis to his conclusions, he quoted from, or made allusions to, Byron's "Don Juan," Pollock's "Course of Time," Byron's "Childe Harold," Lord Brougham's "Opinions on Politics, Law, Science, Education, Literature, etc.," "The Confessions of Rousseau," Sappho, "The Monk," of Matthew Lewis; "Little's Poems;" Mohammed, Milton, Shakespeare, Esculapius, Hippocrates, Locke, Jeremy Bentham, Edwards, Kant, Aristotle, Thackeray, Dickens, Michelet's "L'Amour," Marc Antony, Cleopatra, Lord Nelson, Lady Hamilton, Telemachus, Diana, Caesar, Lucrezia Borgia and Daniel Webster. This address abounds with beautiful periods and striking passages, but it must not be supposed that because of its ornament it was not logical. It was argumentative, forcible, convincing. In reminding the jury of their responsibility, he said: "The juror's oath is not a by-play. It is held most solemn by all Christian communities where the jury system prevails. It is that chain which binds the integrity of man to the throne of eternal justice. And when that chain is broken, conscience swings from its moorings and society is again in a condition to resolve itself back into the original chaos out of which it was carved."

In examining the testimony of the medical experts for the defense which was to the effect that the accused was insane, he declared: "If these theories are correct, why, the mothers of posterity will produce nothing but a band of fools. I am rather inclined to think, after hearing the testimony of some of these physicians, that they have read "L'Amour," of Michelet, a crazy Frenchman, who, in the first instance, idealizes women, taking from them their blood and their brains, and then turns around and bows down before them as an idolater. There is no practical sense in the theories advanced. It is a reflection upon our mothers, upon our wives, and will send down to posterity a nation of fools, if these theories are correct." His most forcible and eloquent passages were hurled directly at the prisoner, and it would be out of place, probably, to repeat them here. Alexander Campbell was associated with Byrne in this case, and made the opening argument for the prosecution. The prisoner was convicted and sentenced to be hanged, but secured a new trial, and before she was again placed at the bar Byrne had gone out of office and passed away from earth.

He died at San Francisco, March 1, 1872, a few months after the close of his last term as District Attorney, aged forty-eight years. He had no relatives in California, and no immediate kinsfolk anywhere. A younger brother, Lafayette M. Byrne, died before him in this city. He had long enjoyed a valuable practice and had made some judicious investments in city real estate. His estate was appraised at \$77,798. It proved, before final settlement, to be worth \$90,000. All of this, after making a few small legacies, he bequeathed to his personal friend and brother lawyer, already well off, E. R. Carpentier.

The minor legacies were : To David Scannell, Elijah Nichols and H. H. Byrne Ciprico, a little son of George Ciprico, the barber, \$1,000 each, and to Mary Cross \$5,000. David Scannell had been Sheriff in the days of the great Vigilance Committee, and has now been for many years Chief Engineer of the Fire Department of San Francisco. Three of Byrne's nieces—Mary E. Holcomb, Catherine F. Holcomb and Julia H. Howard, daughters of a deceased sister—came from Connecticut and contested the will on the grounds of unsoundness of mind and undue influence. They were offered, and accepted from Mr. Carpentier, \$2,500, in full settlement, before trial.

Excepting James King of William, David C. Broderick, General E. D. Baker, and Thomas Starr King, no man was ever buried in San Francisco amid such genuine manifestations of popular sorrow as was Byrne. An immense concourse of mourners attended at St. Mary's Cathedral, where Father Speckels delivered a discourse at once impressive and ornate. Byrne had had Catholic doctrines instilled into his young mind, but through life after his maturity he claimed to be a freethinker, being a close reader and admirer of Darwin, Spencer, and others of that school. His partner used to tell him his freethinking was only skin deep, and, reminding him of Napoleon's saying : "Scratch a Russian and you'll find a Tartar," said he, "Scratch Byrne, and you'll find a Catholic." Byrne dwelt apart from all churches, creeds and religious forms, but as the supreme hour approached, after stoutly holding out against many friendly importunities, he permitted a visit from a Catholic clergyman, to whom he made confession. Personally, he was perhaps the most popular man who ever lived in our metropolis—more popular than Baker. Baker dazzled the multitude from an eminence ; Byrne thrilled them by actual contact. He had the faculty—not faculty, but fortune, because it was an attribute unconsciously possessed—of enlisting the affections of those with whom he conversed. Mention his name in San Francisco to-day, in any knot of men, and some one will say, "I knew Byrne intimately." The average man, after having two or three interviews with him, seemed to feel that he had been admitted unreservedly to his confidence. His funeral procession embraced hundreds of the poorer classes, in humble vehicles and on foot. In the Supreme Court the death of Byrne was announced to the Supreme Bench on July 11, 1872, by the Attorney General, John Lord Love, who made a brief address, and moved an adjournment of the court. Chief Justice Wallace, who had himself, as Attorney General, in earlier times, announced to our highest tribunal, the deaths of leading advocates, responded as follows :

The court recognizes the propriety of the motion submitted by the Attorney General. When a professional man, distinguished in the battle of life, exchanges his armor for the tomb, it is becoming that his surviving comrades pause and pay deserved tribute to his memory.

Mr. Byrne held repeatedly and for a long period of time, the responsible and im-

portant office of District Attorney of San Francisco. In the discharge of the duties of that position, he exhibited rare and admirable qualities. In that branch of professional learning peculiarly within the province of his public labors, he exhibited a profound knowledge of the law, accompanied with a forensic ability and eloquence rarely equaled at any bar, and which, together, advanced him to the front rank of the advocates of the country. That he filled his office to the satisfaction of the community and the benefit of the public, is attested by the general voice, and by his repeated elections to the place.

Firm, yet courteous, he endeared himself to his brethren at the bar, and won their admiration and respect for his talents and integrity, while we are assured of the affection inspired by his social virtues by the universal manifestations of sorrow at his grave. As a lawyer, he was learned, and as an advocate, eloquent and persuasive; as a public officer, he never faltered in the pathway of duty; as a man, he was unassuming, true and unselfish.

It is ordered that the proceedings of this occasion be entered at large upon the records, and, as a further testimony of respect to the memory of the deceased, the court will now adjourn.

Byrne was of short stature, but compactly built, with his head set firmly on his shoulders. His eyes and beard and hair were jet black, the latter abundant and curly. He walked with his head and shoulders thrown back, and his carriage was somewhat stiff. One hand was invariably pocketed. He had the aspect of great physical strength and solidity. He did not look the lawyer at all. His dress was plain and in good taste. His voice was most peculiar; it was harsh, sharp, screeching, a great impediment to his popularity as a speaker. No man with such a voice could attain distinction on the stump or in the lecture room, unless endowed with abilities of the very first class, as well as all the graces and magnetism of person. Yet he made the most of it. He had severely cultivated it under the ablest professors of voice culture, and it had these compensations: he never tired in speech, was never hoarse, and was always distinct. Nor did his voice steadily repel, but the auditor, on hearing him a second time, would gradually become accustomed to its tone and forget its oddity. Music he had studied *con amore*. He *knew how* to sing, and yet *could not* sing—his voice would not permit it. As to correctness of rendition, he could give you almost any popular air from any leading opera. He was quick, bright, apt at repartee, convivial, and a lover of fun.

He spoke off-hand always—that is, he never wrote out anything; but he marshaled his ideas and prepared his plans. He was a powerful prosecutor—watchful, all-seeing, intrepid, not afraid of man or devil. His invective was scathing—it made you shudder at times. Before a jury he was very rarely eclipsed. In force, animation, beauty of imagery and illustration, his jury addresses yield to Baker's only. While he could not stand against the silver tongue* orator before the masses, or on the stump, or in great conventions, yet

*The first use of this expression "silver tongue," so far as my researches have disclosed, was made by the poet Quintus Ennius, who has been styled, "The Father of Roman Literature" [239-169 B.C.] Ennius referred to Cornelius Cethegus as "The Orator with the Silver Tongue." According to Forsyth, Cornelius Cethegus was the first Roman whose reputation for eloquence rests upon positive testimony.

did he at times burst into eloquence as lofty and impassioned as that of Baker himself.

Our advocate was in his speeches too fond of quotation—too fond of talking about the old Greeks and Romans, too fond of airing his stores of information. In quoting, he was sometimes inexact (several times so, in the Fair case), but generally he was correct and happy. He overfed his mind on books, and possessing a good memory (notwithstanding he had also a strong understanding and an original intellect), he found it difficult, now and then, to repel the stirring thoughts of great minds which pressed upon him, bringing “news from the empyrean.”

Many anecdotal reminiscences of Byrne are preserved. One day in Judge Freelon’s court, in 1852 or 1853, when he was District Attorney, Governor Henry S. Foote, then a practicing lawyer here, demurred to an indictment written with Byrne’s puzzling pen, on the ground that it could not be read, and did not appear to be in the English language. Judge Freelon called for Foote’s demurrer, and, examining it, observed that its chirography was, if possible, more of an enigma than that of Byrne’s indictment. Solomon could hardly have done better than the Judge in this perplexity. He directed each counsel to read his own pleading, which being done, the demurrer was overruled. If Governor Foote thought the indictment was expressed in Irish he heard Byrne perform the feat of reading it in English, with uninterrupted flow of language from beginning to end.

In a half jocular way, Byrne was in the habit of boasting that he was descended from an Irish king. He was wont to attach to himself certain persons, who accompanied him in his pleasures at table, etc., and whom he made his butts—whose flattery, however, was not altogether distasteful to him, but was taken as return for their entertainment. One of these was a certain well known “count.” Lafayette Byrne said, one happy night, that he had never really believed in his descent from an Irish king until he saw that his distinguished brother kept a fool—a practice, he understood, of royalty in the old times.

A man was indicted for mayhem—gouging out an eye, and Byrne, as District Attorney framed the indictment. This was demurred to, and on the argument, Byrne’s attention was called to the fact that he had left an “i” out of a word. He replied, “Well, my offense is the same as the defendant’s—each of us has put out an eye.” “But,” remarked a brother lawyer, “your offense is the greater in degree—you destroyed the whole sense of *your* victim; the defendant only partially destroyed *one* sense of *his*.” “And this is the first time,” added Byrne’s partner (striking the District Attorney while he was down), “that I ever heard Byrne leave ‘I’ out.”

He would sometimes make a bull: “Mr. Policeman, how far were you behind this boy when you caught up with him?”

"I don't understand you, sir."

The court suggested that, perhaps, Mr. Byrne meant how far he had to run before he caught him.

"No, your honor," said Byrne, "I meant what I said. How many feet or rods were you behind him before you caught up with him?"

Failing to get any enlightenment on this point, he asked some other question. But he never would admit that he had blundered. Indeed, he never, in or out of court, would concede that he was at fault in anything. He was very obstinate. If he made a mistake, he would stick to it, would twist around it, climb over it, or dig under it, would obscure it with multiplicity of words, of allusion, of phrase, would do anything rather than let the court or jury see that he recognized discomfiture or defeat. He was, as are men of his temperament generally, very vain, but his vanity was perfectly harmless. He was never envious of other men's success in his peculiar line, and never underestimated the efforts of those with whom it was his hap to contend. Withal, he really possessed great simplicity of character. He would take advice from those qualified, in his judgment, to give it, and would follow it, so far as his impulsiveness would allow.

He enjoyed exuberantly life, literature, society; but, for many years before his death he seemed to labor under a burden which he vainly tried to shake off. As Dr. Griswold observed of Edgar A. Poe, he bore through life "the memory of a controlling sorrow." This was his unfortunate marriage. In the press of business, in hours of idleness, in the solitude of study, it was ever present.

Byrne was frequently pitted against Baker at the criminal bar. They, whose names I love to couple, delighted to cross swords with each other. "O, the blood more stirs to rouse a lion than to start a hare!" By a masterly stroke of cool presumption, Byrne once lifted Baker from his footing. The latter recited a fine poetic extract, and remembering Byrne's proneness to quote poetry, he turned to him and remarked, "I suppose the learned District Attorney is familiar with this quotation!" Byrne quickly responded with imperturbable front, "*I should think so; I wrote it myself.*" The "Old Gray Eagle" curved his neck. Would Byrne dare to confront him in open court on such an issue? Could it be possible that in the crowded court-room there were some who would believe that Byrne really wrote those lines, and that he, Baker, was ignorant of the author of his own quotation? But he soon recovered himself and replied: "I never before saw or heard this gem attributed to the learned counselor, but when he asserts his paternity, it is not for me to deny it. I cannot say I *know* he did *not* write it, but I am ready to take the witness stand and state under oath, that I read these very words in Milton before the gentleman was born."

"Great minds often think alike," said Byrne, quietly.

In 1854, in San Francisco, Byrne met and married Matilda Heron, whose almost faultless impersonation of Camille afterwards won her a widely extended celebrity. They married in haste, and repented at leisure, if ever a couple did. So little was known of this marriage that after Byrne's death, some eighteen years later, when Matilda Heron came from New York to contest his will, the announcement created universal surprise. Although he always ignored it, the marriage was a solemn fact. Col. Philip A. Roach was an intimate friend of Byrne both in New York and San Francisco. When the actress told her story to the public in 1872, Col. Roach made an investigation and found that she had been duly married to Byrne by Father McGinness of St. Patrick's Catholic Church at San Francisco, in 1854. I had this from the Colonel on November 29, 1881. The light that was thrown upon this unfortunate alliance came from the sentimental actress herself. In an affidavit filed by her in our Probate Court, August 28, 1872, in the matter of her contest of Harry Byrne's will, she thus expatiated:

In the Probate Court of the City and County of San Francisco, in the matter of the estate of Henry H. Byrne, deceased. City and County of San Francisco, ss.

Matilda Heron Byrne, at present in aforesaid city and county, being first duly sworn, says: I deny that I have a considerable quantity of, or any quantity of, or any real or personal estate, either in the State of New York or elsewhere, sufficient for my support, or held by me in common with Robert Stoepel, or held by Robert Stoepel for my benefit. I have not a dollar in the world, either in real or personal estate, nor is there any relation under heaven between Robert Stoepel and me, not even our only living child, the possession of which I have obtained through her father's proclaiming her illegitimacy. Since the dissolving of my marriage with Robert Stoepel, he has refused to pay one dollar towards the support of either his child or me. When my sad illness, caused by suffering through the overwhelming calamity of my domestic wreck, between those two men, Henry H. Byrne and Robert Stoepel, overcame me, Robert Stoepel refused to pay my doctor's bill or that of his child; refused to clothe or pay for the education of his child. What, then, can be meant by his now holding property for my benefit, I am at a loss to know. Before my leaving New York for San Francisco, Mr. Stoepel sent a messenger to me offering to settle on my child a large sum of money, if I would sell all right and claim to her. This when I was on the bed where I had lain an almost confirmed invalid for fifteen months, and whence I arose to recover, by act of habeas corpus, my little daughter, who was being kidnapped from me to be transported to an obscure and remote place in the Pyrenees. So much for the estate now being held for my benefit.

As to the suit alleged to have been commenced by me in 1869 against Robert Stoepel, if such suit was, or is, in existence, I have no recollection or knowledge of it whatever. About eighteen years ago I was married to Mr. Henry H. Byrne, with the agreement that I should remain on the stage for two years, with the hope, on my part, that I might achieve as great a success in the East as I had in San Francisco. After my return from Europe where I dramatized "Camille," studied under the best masters, and purchased a complete theatrical wardrobe, there was not one prominent manager who would open his doors to me. It was failure after failure. The large amount of money I spent in Europe, and what I sunk in San Francisco under bad advice, had now impoverished me. To Mr. Byrne I faithfully depicted every disaster.

The two years passed; he came, as by promise, and, as I thought, to claim me.

I was in Philadelphia, in the bosom of my family. Mr. Byrne remained three weeks in New York, without even writing to me. Even this I forgave.

At this time an engagement in Pittsburg was opened to me, whither he at length followed me, accompanied by two members of my family. Inquiring why he so neglected me, he answered he had been led astray by some California friends. This, I also forgave. During the four days he remained with me, we discussed all my professional calamities, wherein I told him my sorrowful conviction that I never would be the great artist my soul had so long hungered to become, and that now I was perfectly resigned to follow him and his fortunes. To all of this the dear gentleman most evidently thought a great deal, but very little answered.

The last morning came. I was offered an engagement in Buffalo, and I asked, "Must I go to Buffalo, or may I go with you?" To which he answered: "Go to Buffalo."

Then and there we parted; I to Buffalo; he to his friends. One other year passed, when Mr. Byrne's letters came rarely. At last they ceased entirely. I could not believe he had failed to write to me, and so I mentioned it to my brother, Alexander Heron, President of Heron's Line of Steamships from Philadelphia to Charleston and Savannah, but my brother said, "Tilly, if you had one spark of your mother's pride in you, you would never speak to that man again; he has deserted you." This was a bitter blow to the young actress. A third year had passed since our marriage, since which I never received one dollar from him—not even a little token. After my first shock was over, I wrote to Mr. Byrne calmly, and, under the advice of my brother, asked for a divorce. An immediate reply came to me, in which he used these exact words: "Place this letter in the hands of a lawyer, and it will make you as free as the hour you were born." I placed the letter in the hands of a lawyer, John Hopper, of 110 Broadway, New York, and told him to procure me a divorce. About this time I had begun slowly to succeed in my profession, and it was not surprising that a young girl should have flatterers and snares about her. Often rehearsing "Camile," I envied the humblest woman in the theater who had a husband's protection. In New Orleans I met the conductor of our orchestra, who was polite, respectful and kind to me. We met again in New York, where he presented his parents, sisters and brothers to me; also, his brother-in-law, Vincent Wallace, the composer. They hinted a marriage. I told them I was poor. Robert Stoepel answered: "Wealth is impertinent: we will be poor together; I love you and will labor for you; it is your love I would marry, not your purse." I asked for time. Time passed and I played Camille in Wallack's Theater for 100 nights, achieving a great success. In that triumphant hour I did not forget the poor musician. After a successful trip all over the Union, I sought John Hopper, who told me my case was all right, and that I was a free woman. An inexperienced girl, how could I then know the world or its laws? And I was away from my only friend, my brother. John Hopper urged my marriage, assured me I was free to marry, and engaged his brother-in-law, Rev. Mr. Gallordet, to marry Mr. Stoepel and myself in St. Ann's Church, where, in the presence of a large number of friends, Mr. Hopper and his wife Rosalie placed Robert Stoepel's hand and mine together before the altar. Years passed, honor accompanied, and prosperity attended our mutual industry. Certain obligations called me to San Francisco. I left our happy home, where I left my only child and her father, and arrived here. The day after my arrival Judge —— called on me, and informed me that through an old friend he came on behalf of his client, Mr. Byrne, relative to a divorce which Mr. Byrne claimed. I was naturally annoyed, and requested to see Mr. Byrne in person, which the judge positively and imperatively refused. Worn by a long voyage, away from friends and home, in a strange land, I said it was not fair to bring me in such light before the

public, to which ——— replied that the matter could be settled up in the country by parties there who would be operated upon to keep it secret. I answered: I did not know that that was the way in which justice was dispensed in California, and asked on what ground could Mr. Byrne make so outrageous a request. Whereupon, Mr. ——— read to me a certain paper, which I could not comprehend until he came to the word "adultery," when I told him to proceed no further. He then substituted for the odious word "desertion." Again I entreated an interview with Mr. Byrne, and again was denied, the judge adding, "Have you no pride? I tell you if Harry was weak enough to see you, I, as his counsel would forbid it. The man despises you." Next day I met Harry on my way to rehearsal. He turned ashy pale, and exclaimed, "Why, Tilly!" I asked what he meant by sending ——— every day to annoy me in the midst of my labor. He denied all knowledge of the affair, and an interview between us was decided upon.

Thereafter we had a long, serious and affecting interview, explanation and reconciliation. After that he came constantly to see me during my stay in San Francisco. During our long conversations Mr. Byrne's constant theme was my being his wife again. He forbade ——— ever to mention divorce to me. But the industrious ——— was not disheartened, for he reminded me that after I was two months married to Harry, the latter had sent me \$1,000 and that it would be a graceful thing to repay it. Well, I said, since you are so zealous in your friend's behalf, I will pay it. Sell that water lot, on which you insist he has been paying taxes, while I can prove my brother-in-law has been really paying them. Sell the lot—pay your client principal, taxes and interest on the same. The lot was sold for \$2,300. The purchaser refused to lay down the money until I signed it by my real name in the presence of Dr. Harris, Judge Freelon and some others. I took the pen and wrote "Matilda Heron," then, hesitating, I said: What else? and both Harry and Freelon answered aloud: "Byrne," which, to the best of my knowledge, I then signed.

In our next interview I asked Harry what on earth that signature meant, and he answered: "You are not Stoepel's wife, but mine; your property is mine; that beautiful home of yours is mine; you are mine; your very child is mine; you are my wife. Your divorce from me was either illegally obtained or fraudulent."

This intelligence pained me exceedingly. Just then I received a dispatch of my brother's death. I was obliged, even in my double affliction, to perform three nights. At last I broke down ill, and all that tender respect and love could do, Harry Byrne did for me. I had two physicians, but he sent his own. He sent Mr. Freelon to assure me that, if anything serious should arise from my illness, he would send a faithful messenger to accompany me home. I got well and traveled up the country. Not a city I performed in, scarcely a day passed, but brought a letter from Mr. Byrne. When it became necessary for me to go East, he became extremely melancholy, even to weakness. I could only arouse him by expressing the hope that I would return to him. He planned that we should go abroad for some years. I told him I would go home and state my position frankly to Mr. Stoepel. In parting with me he exhibited great sensibility and deep feeling. On my return to New York I immediately and frankly told Mr. Stoepel all, without a particle of reserve. Then arose a question of property between us. Mr. Stoepel saying: "Then if you should die Byrne can claim all." I answered: "These were Mr. Byrne's exact words." From that hour strife and confusion surrounded me. Between two husbands—my brother dead, a daughter's honor and my own involved—I knew not whither to turn. I made a retreat to the convent to compose myself, leaving which I was thrust into the Supreme Court by Robert Stoepel vs. Matilda Heron Byrne, to compel me to consent to a division of property as partners in business. I did not wish to divide our property, but to keep it together for the child, so I engaged Mr.

James T. Brady to defend the case. Unfortunately that gentleman in a short time died. On requesting his partner to resume the case that gentleman said: "Matilda, you will have trouble with Stoepel, for I have had a communication from Mr. Byrne who says you are his wife, that your divorce from him was not legal." Weary of publicity, disheartened, desperate, I left that office, and made over to Robert Stoepel every piece of property and every dollar I possessed on earth. From that time, too depressed to act, I was supporting myself and my child by my education, when two years ago I was prostrated by severe fever, and kept my room and bed for fifteen months. I was convalescent, and was sent in midwinter to the seashore, where the news of Mr. Byrne's death reached me; also, telegrams and letters telling me to come to San Francisco. I have come to defend my honor and my rights. From the investigations made by my lawyer in New York at the time of the litigation between Robert Stoepel and myself, I became fully satisfied, and do now firmly believe, there never was a divorce between Henry H. Byrne and myself.

[Signed] MATILDA HERON BYRNE.

Subscribed and sworn to this 27th day of August, A. D. 1872, before me,

[Seal] SAMUEL HERMANN,
Notary Public.

There was a compromise effected between Mr. Carpentier, the executor and legatee before named, and Matilda Heron. Mr. Carpentier's final account shows that Matilda Heron received \$1,000. The fact is, I have it on good authority, she actually received \$5,000.

The Mary Cross, to whom Mr. Byrne left \$5,000, was a young woman from Philadelphia, who learned the millinery art in the same institution with Matilda Heron, through whom she became acquainted with Mr. Byrne. She was Mr. Byrne's housekeeper in one of his houses, corner of Howard and Twelfth streets, and in his sickness showed him unremitting attention. He really was indebted to her for many acts of kindness. He was not married, and in periods of sickness and gloom, consequent upon excess of conviviality, he invariably sought her house and found hospitable welcome.

It has always been an enigma to the bar and the community that Byrne left his estate to a man who already had ample means and was not of his blood. This may clear the mystery: Byrne, while not a money worshiper, and while numbering among his ardent friends and admirers thousands of people in the humble walks of life, yet looked up to moneyed men, and cherished unfeigned regard for those who had displayed the ability to accumulate wealth. He sometimes repeated an expression which he attributed to his father, that "a poor man could not be honest." He had no near relatives to survive him. He did not want his estate squandered, and felt that it would not be appreciated if left to any impecunious companions. Among his immediate personal friends was one who knew how to make money and how to take care of it. Carpentier and Byrne, moreover, had known each other in the East. When Byrne, before the close of his second term as District Attorney, in 1854, went to New York on a visit, he left his

office in charge of Carpentier. The two men were both bachelors (Byrne practically, at any rate), and this tended to knit them closer together. Just as Byrne was about to pass into decline, and softening of the brain seemed approaching (in 1871) he told a friend that he would like to spend some years in Europe, but did not have the ready means. Like many other well-to-do men he sometimes felt that he was poor. He said he did not want to mortgage his property. This friend mentioned the matter to Mr. Carpentier, who promptly said that Mr. Byrne need not let money matters trouble him an instant—that he, Carpentier, would supply him with all funds required. This was communicated to Mr. Byrne before his will was drawn. Shortly afterwards Mr. Byrne was ill and on the bed from which he never arose. Mr. Carpentier visited him and seeing his serious condition, staid by his bedside day after day and night after night until the end came.

It seems, then, that although Byrne left his estate to one who did not need it, although he could certainly have done more good with it, he yet bequeathed it to one of whom he could say: "He was my friend, faithful and just to me."

CHAPTER VII.

Lorenzo Sawyer—With McDougall in Illinois—In the El Dorado Mines in 1850—The Early Bar of Nevada County—A Remarkable Murder Case—Honors in San Francisco—A Long Tenure on the Bench—Judicial View of the Chinese Question—The Authorship of the Sole Trader Act—The Principles of Masonry—First Meeting with the Eccentric Lockwood—References to A. A. Sargent, Judge J. B. Crockett, Jno. R. McConnell, E. W. Roberts, E. F. W. Ellis, Stanton Buckner, C. H. S. Williams, Roderick N. Morrison, Frank M. Pixley and Tiburelo Parrott.

Lorenzo Sawyer holds for life the most exalted judicial station in California, and his career on the bench has already been longer than any other in the annals of the State, except those of Judges Hoffman and Field. A quiet, unassuming man, his forensic record is yet full of interest, and to those who may have the idea that his life has been uneventful, I promise a pleasant surprise.

He was born in Jefferson County, New York, May 23, 1820. (Judge S. C. Hastings was born in the same county, six years earlier). Like the Shafers, who were born in Vermont, four and eight years before him, he had the blessing of a noble parentage, and, like them, reared in the home of honesty, simplicity, sobriety and frugality, he heeded every parental counsel, and has led a life of exceptional beauty and purity. His father has been dead some years but his mother lingered until passed ninety-two, dying on June 9, 1886, at Belvidere, Illinois. Their golden wedding was celebrated at that place, February 11, 1869, when there was a happy reunion of their descendants and relatives. On that occasion the Hon. Joel Swain Sawyer, of Minnesota, the next eldest son, delivered to the aged couple an affecting memorial address, which closed with these words:

"To the principles of morality, virtue and Gospel truth, early instilled into their minds, enforced by your examples, do your children owe whatever of good may appear in their characters, whatever of success they may obtain in life, whatever of public or private consideration and esteem they may inspire; and as a fitting return for your care, your integrity, and the other Christian graces illustrated by your daily lives, you now realize the assurance of the sacred proverbialist; your children shall arise and pronounce you blessed—as we do this day."

At this "wedding" a hymn was sung which had been sung at the

marriage fifty years before, to the same tune, Exhortation, and from the same books.

Lorenzo Sawyer was born on a farm, and lived there until his sixteenth year. In winter he attended the district school; in summer he helped to bear the harvest home. The neighborhood contained a large and excellent library, of which he availed himself at night and on Sundays. After passing a year at the high school at Watertown, New York, called the Black River Institute, he went with his father and family to Pennsylvania, where a new farm was located and cleared. The next eight years were spent in teaching school in New York and Ohio, and in reading law, which profession he had decided to follow before he first left his native State.

The first law office he entered was that of Hon. Gustavus Swan, who then led the Ohio bar in land controversies. Judge Swan soon retired from practice, and Lorenzo Sawyer then was received into the office of Noah H. Swayne, afterwards a Justice of the United States Supreme Court. There he had the benefit of excellent instruction until his admission to the bar in 1846. He then went to Chicago, and passed a year in the office of James A. McDougall, who was three years his senior, and who was then Attorney General of the State, and who afterwards represented California in the upper house of Congress. He then went to Wisconsin, settling in a little town which bore the name of his native county, and, forming a partnership with John E. Holmes, then Lieutenant Governor, commenced the practice of law.

The old Whig party is dead only in name. Its principles are interwoven with the country's life. Daniel Webster and Henry Clay—these were the men whom Lorenzo Sawyer followed in politics. He had pitched his tent, however, in a locality not very congenial to Whig ideas. His industry, good habits and strong common sense showed that he was the right man, but he was not yet in the right place.

He built up a lucrative law practice for that locality but he was ambitious, and his chance for political preferment in that region was not flattering. So, when the cry of "Eureka!" echoed around the world, he was glad to respond.

In July, 1850, he arrived in California, having crossed the plains with a company of young men from Wisconsin. It was a journey of seventy-two days—"an unprecedentedly short trip" they called it. Mr. Sawyer sent to the *Ohio Observer* many incidents of this trip, and his articles were copied by several Western journals, furnishing valuable data to emigrants who followed him.

El Dorado! Beautiful name, most appropriate for a county of California. In that county Mr. Sawyer first rested after crossing the plains. Like Judge Bennett, immediately on his arrival he went to work in the mines to get a stake. Finding that his profession presented a golden opportunity, he went to Sacramento and commenced law practice. He soon removed to Nevada

City. His career there was comparatively short, but was cast in an eventful period, and the history of the bar of Nevada county, which was written by the Hon. A. A. Sargent, makes Lorenzo Sawyer one of the most prominent figures of that day. His library at first consisted of eleven volumes, brought from the Prairie State. His brief life at Nevada was broken by a visit to San Francisco, where he had decided to locate permanently. Disaster here came upon him. The honors this people had in store for him were unrevealed, and, being twice burned out of his office, he returned to his mountain town, where he was destined to win great local fame.

In 1852 he was counsel for the defense in one of the strangest criminal cases on record. A woman of the world, "Old Harriet," kept a saloon on Broad street. A mountain stream, Deer creek, dashed by in the rear of her house—right through the heart of the town. It was an early day, and she had a business which "paid." At the foot of the street there had been a bridge, which was the highway of communication between the two divisions of the settlement. On Little Deer Creek, a mile off, on the other side of the main creek, was the mining camp of Pat Berry, a prosperous miner. Right across the street from "Harriet's" there was, perhaps, the liveliest dance-house to be found in "the mines." It was nightly visited by men of all conditions, who made night, and sometimes morning, "hideous" with their revelry. Among these festive arrivals were many who came from across the creek—from mining camps, here, there and everywhere.

During one rainy season a freshet broke down the bridge across the raging creek, but a tree was felled so as to afford a passage to footmen. At the time referred to the creek was a turbulent torrent, and went roaring and dashing and crashing through the town, cutting it in two, with only the fallen tree for a footway between the two sections. On one Saturday Pat Berry came to town. He had made money during the week, and brought it with him. Arrived in town he bought an entire new outfit of outer and under-clothing. After dinner he went to the dance-house, and spent an hour. Then he crossed the street to "Old Harriet's." He was seen at the latter place at a late hour. But thereafter he was never seen alive.

A cry of "murder!" rang out upon the air that night, but not being repeated those whom it aroused gave it little thought.

But where was Pat Berry? His nude body was found in an eddy of the creek, about six miles below, a few days afterward. A trifling scratch was upon the abdomen, but on the forehead was a large, extravasated wound, which, according to medical testimony, must have been inflicted upon the victim while he was still alive. On the following day Harriet was accused of the crime of murder and arrested—also a stalwart Cornishman, her "fighting-man," so-called. In those days gold dust, instead of stamped money, was the medium of exchange. Everybody who was in business kept a pair of scales

to weigh and determine the value of gold dust. Harriet had such a pair of scales ; and there was a large iron weight used with it, which, the prosecution said, was the instrument of the death of Pat Berry.

On the trial of the woman and her fellow, John R. McConnell, a bright but eccentric and erratic leader of our bar, who died in Colorado in 1879, prosecuted, and Lorenzo Sawyer defended. Justice John Anderson, brother of one of the earliest and ablest of California lawyers, and who, thirty years later was a Justice of the Peace in the same old town, heard the preliminary examination of the case. This consumed two or three days. It was established by the prosecution that Berry had money upon his person when he visited Nevada City on that fatal night. His movements were traced ; the time and manner of the recovery of his body were shown ; that the wound on his head was given in life was made clear, and it was also proved that this wound was inflicted with a round, blunt weapon.

The theory of the prosecution was that Berry had been murdered for his money in the brothel of Harriet by the latter and her "friend," then stripped of his clothing, which, as stated, was all new, and thrown into the convenient creek at the rear of the house.

Against so plausible a theory Lorenzo Sawyer had to contend. It is to be regretted, from a strictly legal standpoint, that Justice Anderson did not decide this case as it was at first submitted to him. It is to be regretted that the highest tribunal of our country had not been called upon to pass on this very case. It would have furnished a fine test of the certainty of human judgment. It would be decidedly interesting to know what would have been the issue of that trial, if the evidence mentioned below had not been elicited.

Judge Sawyer's theory for the defense was that Berry had started about midnight from the woman's house for home ; that he was heavy with alcohol when he set forth upon his dark, homeward journey ; that in crossing the creek he fell off the narrow log ; and that, in falling, his head struck upon a rock—there were plenty of rocks in that vicinity—and thence received the wound from which he died some minutes later, thus accounting for the extravasation of blood. The missing clothes were a puzzler, but the counsel sought to account for their absence by invoking certain principles of natural philosophy as to the action of the roaring torrent of water, rocks, trees, etc., in the bed of the stream.

Justice John Anderson, did not know what to do with the case as submitted to him. He took it under advisement for a week.

It so happened, that, during the week, at midday in view of several witnesses, two men started across the creek aforesaid—to walk the famous log in company. In the middle of the riotous stream one of them pitched off. *He* was never seen alive. His companion and others—for this was in the daytime—ran down the banks of the creek, and, some miles below, found his

dead body in the very same eddy in which Pat Berry's body had been found a few days before. An extravasated wound was found upon the head, just like that which was on the head of Pat Berry. There were no other wounds on the body, but all the clothes were stripped off except the undershirt, which, turned inside out, and drawn over his head, was clasped around the wrist, and held by a single button.

This last mishap coming to Judge Sawyer's knowledge, he moved the court to reopen the case. It was so ordered, and new evidence of the circumstances just related being submitted, the defendants were discharged.

When informed of the circumstances of the second death, "Harriet" lifted her hands and eyes towards heaven and in tones and manner intensely tragic, but with manifest sincerity, exclaimed: "God himself has interposed to save an innocent woman!"

There was tried, in 1851, at Rough and Ready, Nevada county, before E. W. Roberts, Justice of the Peace (since a County Judge and State Senator) a case which involved the possession of a mining claim on Industry Bar, valued at \$100,000. It was the case of the period. The parties to the suit were many and prominent, and fully supplied with the sinews of war. Lorenzo Sawyer was leading counsel for the plaintiffs. It was agreed that the hotel bill, wines, cigars, tobacco, etc., for both sides, should go into the bill of costs in the case, and be paid by the losing party. After a three days' trial the jury disagreed. A second trial, lasting ten days, resulted in a victory for Judge Sawyer's clients. The bill of costs, recovered against and paid by the defendants, was \$1,992. The hotel bills were probably twice as much more.

Among Judge Sawyer's leading cases are Taylor vs. Hargous (4 Cal., 268), and Eddy vs. Simpson (3 Cal., 251). These cases are "leading," not only in the sense that they are important, but that they first established, in this State, the principles therein laid down. In Eddy vs. Simpson, the plaintiffs sued to recover damages for interference with their water rights. One Artemas Rogers was the heavy man of the defendants. He was a very active, positive character, and anticipating the suit, he visited Sawyer at his office to retain him. Sawyer had prevailed against Artemas in a hot legal conflict a few months before, and he remembered it. He now wanted his help. Having stated his case, he asked:

"Can you win it?"

"I don't think I can," said Sawyer.

"By —, sir; you are not the man for me, then," exclaimed Rogers.

"I don't think I am," said Sawyer, quietly.

Rogers then narrated a chapter from his experience in Sawyer's native State. He said he had once consulted a lawyer in an important cause in that State, who did not think he could win. He thereupon declined to retain him, employed another lawyer, who thought he could win, and he did.

"I had rather be against you than for you in this matter," said Sawyer. "As you do not want me, you will not object if I accept employment from the other side. I know they will call on me.

"Not at all," replied Rogers. "If I do not employ a lawyer, I will not keep him out of the case. Do what you can for them, and charge a d— big fee. But you can't win."

Within an hour Sawyer was retained on the other side. The trial soon came off before the District Court. Barbour, the Judge, having recently been elected was disqualified in many cases, and Judge A. C. Monson, of Sacramento, who afterwards became one of the richest men in the State, presided at that term. Judge Monson instructed the jury as requested by Sawyer. There was a disagreement, only one obstinate juror favoring the Rogers party. A change of venue was had to Marysville and the case was tried again before Judge W. T. Barbour. John R. McConnell conducted the plaintiff's case, Sawyer being unable for various reasons to attend. Judge Barbour refused to give the instructions which Judge Monson had given on the first trial but gave instructions directly the reverse, and a jury brought in a verdict for the defendants. Then Artemas Rogers took particular pains to wait upon Sawyer and announce the result.

"You laugh too early," said Sawyer; "I'll show my hand in the Supreme Court. We will meet again at Phillippi."

Rogers afterwards discovered that he had laughed too soon. The plaintiffs were the men who laughed last and who laughed best. The Supreme Court reversed the judgment, in a very brief decision written by Justice Wells, one of the very few opinions penned by that Justice.

In the case of Taylor vs. Hargous, which was commenced after Judge Sawyer's removal to San Francisco, and which he won both in the old Superior Court and on appeal, the Supreme Court declared that when a homestead has been duly selected, and occupied as a residence, and the husband executes thereafter a deed of the property and removes with his wife therefrom, but the wife does not join in signing the deed, the homestead is not abandoned and the deed is void. Justice Heydenfeldt, who wrote the opinion, said: "If the husband can sell at pleasure, and remove to another place, without the consent or approbation of the wife, then the design of the statute to protect her against the improvidence, misfortunes or misconduct of the husband, would be totally nugatory."

While in Nevada City, Judge Sawyer practiced law in partnership, first with E. F. W. Ellis and afterwards with Judge Stanton Buckner. It was announced in a local print recently that a certain lawyer was the author of the Sole Trader Act. It was an error. E. F. W. Ellis wrote and secured the passage of that measure, its necessity being suggested to him by the circum-

stances of a certain female friend of his in Nevada City. It is one of the wisest acts on our statute books, although it has often been made the cover of gross fraud.

Ellis was in the lower house of the California Legislature in 1852. He was an able lawyer; but, like Baker, he was restive in harness, and thirsted for glory. He went back to his State and Baker's State, and, during the war, was Colonel of the fifteenth Illinois regiment, one of the earliest to volunteer on the first call. He fell in a charge at Shiloh. "Catch me, boys!" were his last words. While criticising the evidence of a witness, on one occasion, in a Nevada City court, Ellis glanced at the subject of his remarks just in time to see him draw a pistol. Ellis drew a long knife, which he carried, and leaping over the bar table, rushed upon his enemy, who at once fled into the street. Ellis then returned and concluded his argument. Judge Stanton Buckner was from Missouri, to which State he returned. Sargent, in his hasty history of the Nevada bar, tells this of Buckner: To demur was his strong forte. He was a kind and gentlemanly man, but disagreeable to practice with, by reason of his prolixity and slowness. In arguing a petty criminal case one day before Justice Endicott, who was very thin and bony, and who had a very hard seat to sit upon, Buckner, after a long talk, assumed a certain attitude peculiar to him, and which indicated that he had a great deal more to say. "I will now show your honor," he said, "that a man is presumed to be innocent until he is proved guilty." "The court admits that," said Endicott, interrupting; "the court is with you in that; but there is no presumption that the court's bottom is made of cast-iron."

In the autumn of 1853, Judge Sawyer removed to San Francisco, and he has ever since resided there. During his short stay there in 1851, he was in partnership with Roderick N. Morrison, then County Judge and Presiding Judge of the Court of Session, and Frank M. Pixley. Judge Morrison was Mr. Pixley's uncle. His name is upon many pages of our earlier Supreme Court Reports.

San Francisco has always been a very easy city to get acquainted with. At least a hundred men have won substantial honors there before they were well acquainted with a hundred men in the city. Judge Sawyer had not been there a year when he was elected City Attorney. Litigation was very heavy at that time; the city, too, was involved in many suits. During his term of office, no judgment was obtained against the city, and of the judgments which were rendered in her favor only one—Hazen vs. San Francisco—was reversed on appeal. In the case of the San Francisco Gas Company vs. the City of San Francisco (9 Cal. 433), Judge Sawyer, then having passed out of the service of the city, appeared against the city. He conducted the plaintiff's case in the District Court, and, on appeal, made an argument and

prepared an elaborate brief. The final decision in this case, which was in his favor, overturned principles upon which many judgments in favor of the city rested.

In 1855 he was a candidate before the State Convention of his party for the nomination of Supreme Judge, and was defeated by six votes. At that election a nomination was equivalent to an election. In the spring of 1861 he formed a partnership with General Charles H. S. Williams, which continued until his appointment to the bench of the Twelfth District Court.

This firm established a branch office at Virginia City, Nevada, where Judge Sawyer was temporarily engaged, when, in May, 1862, Governor Stanford appointed him Judge of the Twelfth District Court, Judge Alexander Campbell having resigned. Crossing the snow-wrapped mountains on horseback, he reached San Francisco on Saturday night, and on the next Monday, June 2, 1862, he opened court at Redwood in San Mateo County—the counties of San Francisco and San Mateo comprising the Twelfth Judicial District. He was elected at the next election for a full term without opposition, both parties having put him in nomination. Under our reorganized judicial system, pursuant to our second State Constitution, in 1863, Judge Sawyer was elected on the Republican ticket a Justice of the Supreme Court. On casting lots, as required by the constitution, he drew the middle term, six years. During the last two years of his term he was Chief Justice. In 1869, as his term as Supreme Judge was drawing to a close, Judge Sawyer was appointed by President Grant, Judge of the United States Circuit Court of the Ninth Circuit, embracing the Pacific States. The Senate confirmed the nomination without dissent, and he entered upon the office in the beginning of 1870.

At the bar and on the bench Judge Sawyer has always been distinguished for industry and honesty. He never laid claim to brilliancy or genius. He is a man of business, richly endowed with common sense, practical, prudent. Truth and duty are his watch words. In investigation he dives to the bottom and explores with rare patience and application. He always made it a habit to investigate thoroughly whatever might be the subject of his study. His staying qualities are great. The eccentric Lockwood, whose logical power was universally acknowledged, once found Sawyer opposed to him. It was the first case in which Sawyer appeared in San Francisco. Lockwood made an ingenious argument, and sat down, giving to Sawyer, whom he had never met before, a glance which said, "Who are you, I wonder?" Sawyer was well prepared, and made an argument full, forcible, conclusive. He had the right side of the case, too. When he closed, Lockwood, who had followed him closely, arose and told the court that Sawyer's argument was sound, and he felt it his duty to surrender: A few minutes afterwards Lockwood seeing Sawyer in the corridor, approached him with extended hand, and said: "I don't know who you are, or where you came from, but you laid me out as

cold as a wedge." After some further complimentary remarks, he suggested a partnership.

Judges Field, Sawyer and Hoffman, Federal Judges in California, are of one mind on the Chinese question. That is, while they might differ as to the *kind* of legislation appropriate to the subject, they agree perfectly as to *where the power* of legislation lies. They believe this undesirable immigration should be checked, but hold that all the State can do in the premises is by way of agitation and petition to Congress. In the case of Tiburcio Parrott on habeas corpus, Judge Sawyer has given his views at length.

Mr. Parrott, who was President and a Director of the Sulphur Bank Quicksilver Mining Company, a California corporation, was arrested, and held to answer before the proper State court for having employed, in the business of the corporation, certain Chinamen. He was taken on habeas corpus before Judges Sawyer and Hoffman, when elaborate arguments were made by able counsel, pro and con, on the question of the validity of the State law prohibiting the employment of Chinamen in certain cases, and of the article in our new constitution upon which that law was based. Judge Sawyer held that the constitutional and statutory provisions were in conflict with the constitution and laws of the United States, and of the Burlingame treaty between this country and China. In dealing with the question he threw out these suggestions :

Holding, as we do, that the constitutional and statutory provisions in question are void for reasons already stated, we deem it proper again to call public attention to the fact, however unpleasant it may be to the very great majority of the citizens of California, that, however undesirable, or even ultimately dangerous to our civilization, an unlimited immigration of Chinese may be, the remedy is not with the State, but with the general government. The Chinese have a perfect right, 'under the stipulations of the treaty, to reside in the State and enjoy all privileges, immunities and exemptions that may be enjoyed by the citizens and subjects of any other nation; and under the fourteenth amendment to the national constitution, the right to enjoy life, liberty and property, and the equal protection of the laws, in the same degree and to the same extent as these rights are enjoyed by our own citizens. To persist in State legislation in direct violation of treaty stipulations and of the constitution of the United States, and to endeavor to enforce such void legislation, is to waste efforts in a barren field, which, if expended in the proper direction, might be productive of valuable fruit; and, besides, it is little short of incipient rebellion."

Unlike his brother Hoffman, Judge Sawyer sometimes makes public addresses. At the fifth annual meeting of the Associated Alumni of the Pacific coast, held in Oakland, June 3, 1868, the Judge responded to the toast, "The Judiciary" at some length. He was then the Chief Justice of our State Supreme Court. In this speech he said, among many quotable passages :

The bar is the fountain from which the judiciary is to be continually replenished; and, as it is a well established principle in natural philosophy, that the stream can never

rise higher than the fountain which supplies it, so the bench can never rise far above the level of the bar.

I cannot believe it possible that one endowed with fair natural abilities, a sound and unbiased judgment, who has cultivated his talents with diligence and care, and become well grounded in the ethics of the law—who has risen to a true conception of the magnitude, and become thoroughly penetrated with the vast importance of the mission of the judiciary in its relation to the well-being of man, and to the stability of good government—can make a *bad* judge. Such a man may not attain the summit of judicial greatness; he may not be a brilliant luminary, shedding his light afar, imparting alimant and warmth to nourish and promote the administration of justice in distant lands; but he cannot fail to be a worthy judge and useful in the immediate sphere of his influence; he cannot fail to contribute, in some degree, to the perpetuity of free institutions.

In 1879, Judge Sawyer was the Grand Orator of the Masonic Order in California, and on October 13th of that year he delivered the annual oration before the Grand Lodge of this State. It was mainly historical, commencing in the misty dawn of architecture, and tracing the course of operative Masonry through many centuries, pointing the while to the many monumental splendors that yet attest its handiwork, down to the time, when, reorganized upon the speculative basis, and using its implements as symbols only, the craft entered the field of charity and free inquiry. Then, following his enlarged theme down to the present day, he said :

Masonry is not, and it does not profess to be, a religion, or a substitute for religion; but it inculcates a system of the purest morals, which is an essential element and necessary concomitant of all true religion. There are certain elements or principles which are universally accepted as essential to all systems of faith worthy the name of religion—such as a belief in a Supreme Being; a recognition of the moral distinction between right and wrong; the obligation to recognize and cultivate the practice of all the virtues, such as temperance, sobriety, chastity, fortitude, prudence, justice and, chief of all, charity. On these principles all must and do agree. There are other points of faith upon which the reason may and does pause, inquire, doubt: and yet it is upon these latter that zealots and enthusiasts dogmatize most confidently, dispute most furiously, and hate most implacably. It is upon these very points where we should be most distrustful of the correctness of our judgment, and most charitable towards the views of others, that man is most confident, most obstinate, most uncompromising; and it is upon these that he consigns his fellow man to the dungeon, stretches him upon the rack and burns him at the stake. Into that disputed territory Masonry does not enter. Its leading tenet, charity, forbids it—all its principles prohibit it. It accepts and plants itself upon those self-evident and universally accepted principles which lie at the foundation of all true religion and all morality, and upon the recognition and practice of which all human happiness must rest.

On March 17, 1869, at a banquet at the Brooklyn Hotel, San Francisco, at which many had gathered to commemorate, in that agreeable manner, the life and services of Ireland's patron saint, Judge Sawyer spoke for "The Judiciary of California and of the United States." The specimens of his humor in his remarks on public and social occasions are so few that it may

be well to give the following a place in this sketch. In closing his response on the occasion just alluded to, he thus sought to call out Judge Crockett, his venerable associate on the bench of the State Supreme Court:

Mr. President: I see near me my distinguished associate, Mr. Justice Crockett. The law and the Gospel are intimately connected, and it has often happened that the ministers of the one were alike the ministers of the other. In former times it not infrequently occurred that the Lord Chief Justice of England was also a bishop. Even I, myself, Mr. President, have occasionally been set down by careless observers for a priest, but my distinguished friend here never passes among strangers for anything less than a bishop. That severe and dignified gravity, which sits so gracefully on my friend here, is well calculated to produce an impression of superior sanctity. I am told, sir, that it has even become dangerous for him to venture abroad unattended; and that on his last excursion from home an expectant cavalcade of pious people, in the southern part of the State, mistaking him for your very eminent and worthy Archbishop, captured my distinguished brother, and, before he could fully comprehend the situation, whisked him off to the Mission Church. What they did with him, and how he escaped, I have never been able to learn. Perhaps he will inform you. Can you wonder at this mistake? Is it possible to contemplate that benignant countenance, and doubt that, had he lived in the year of grace 492, the mantle of St. Patrick would have fallen on his sanctified shoulders? It seems to me eminently fitting that he should be present at this festival of St. Patrick.

Judge Sawyer's latest public address was that delivered at the laying of the corner-stone of the Leland Stanford, Junior, University. The act of placing the stone was done by Senator Stanford, the founder of the University, at the site at Palo Alto, Santa Clara County, May 14, 1887. Judge Sawyer's name had led the list of the honored and worthy men whom the founder had selected as trustees of the institution, and at the organization of these gentlemen as a Board of Trustees the Judge was unanimously chosen as President of the Board. By virtue of that office he was called upon to make the address on the occasion stated. A lengthy extract from this address will fitly close this chapter.

The little grove in the suburbs of Athens, which Academus presented to the Athenians, constituted the academy in which Socrates, and Plato, and their disciples, taught their pupils philosophy, rhetoric, logic, poetry, oratory, mathematics, the fine arts and all the sciences so far as then developed. The influence emanating from those schools, notwithstanding their limited resources, has been largely felt through all succeeding ages; and it has, to this day, given direction to thought, and contributed largely to mould the characters and the civil institutions of all the peoples of Europe, and their descendants in America, and wheresoever else they may be found on the face of the earth. The people of that little Republic of Attica—the whole area of whose territory was only about two-thirds as large as that of the county of Santa Clara, in which our coming University is located—exercised a greater influence over the civilization, institution and destinies of modern nations, than any other people, however great.

The groves of Palo Alto—the Tall Tree—are much larger than "Academus' Sacred Shade." These sturdy, unbrageous oaks, with Briarean arms; these stalwart spreading laurels, and these tall eucalypti, are much grander, and more imposing, than the arbor-tenants of the grove at Athens. The soil of Palo Alto is far richer, and more productive than that of Attica; it yields as fine wheat, as delicious figs, grapes, olives and other

fruits. Its scenery is almost as grand, and awe-inspiring and quite as picturesque. Its climate is as dry, equable, and delightful. The arroyo de San Francisquito is as flush, and turbulent, in winter, if—while abundantly supplied for all purposes of the University above—as waterless in its lower reaches, in summer, as the two rivulets Cephissus and Ilissus. The transparent clearness and coloring of our sky is as “matchless” as that of Attica; and the azure dome above our heads, by day or night, is as pure and as brilliant as the “Violet Crown of Athens.” All our conditions are equally favorable to health, to physical and mental development, and to physical and mental enjoyment. Not an hour in the year is so cold as to interfere with mental or physical labor, not an hour so hot as to render one languid, indisposed to physical or mental exertion, or as to dull the edge of thought. There is not a place in our broad land, outside our own beloved State, where one can perform so much continuous physical or mental labor without weariness or irksomeness. Should the plans of the founders of the Leland Stanford, Junior, University be carried out, in accordance with their grand conceptions, with such advantages as the location and climate afford, why should not students be attracted to its portals, not only from California, but from all other States of our vast country, now containing 60,000,000 of people and even from foreign lands? What should prevent this University from becoming, in the great future, the first in this or any other land? When fully developed, who can estimate its influence for good upon the destinies of the human race?

A word to the founders of the Leland Stanford, Junior, University. It is fit that the corner-stone of this edifice should be laid on the anniversary of the birth of him, who, while yet a mere youth, first suggested the founding of a university—a suggestion upon which you have nobly acted, and to the establishment of which you have devoted so large a portion of the accumulations of a most energetic, active, and trying life. It is, eminently fit, that an institution founded and endowed on that suggestion should bear his name. The ways of Providence are inscrutable. Under Divine guidance, his special mission on earth may have been to wake and set in motion those slumbering sentiments and moral forces which have so grandly responded to the impetus given, by devoting so large a portion of your acquisitions, and the remainder of your lives, to the realization of the objects thus suggested. If so, his mission has been nobly performed, and it is fit that both his name and the names of those who have executed his behests should be enrolled high upon the scroll of fame, and of the benefactors of the human race. You have wisely determined, during your lives, to manage and control for yourselves the funds of the foundation; to supervise and direct the arrangement and construction of the buildings, and the required adjuncts, and to superintend and give direction to the early development and workings of the new University. This is well. He who *conceives* is the one to *successfully execute*. May you remain among us, to manage and control this great work, until you shall see the institution founded by your bounty, firmly established on an immovable basis, enjoying a full measure of prosperity, affording the citizens of your adopted State the educational advantages contemplated, and dispensing to all the blessings and benign influences that ought to flow from such institutions. Long may you enjoy the satisfaction afforded by hopes fully realized—*Seri in coelum redeatis*.

Fellow-members of the Board of Trustees of the Leland Stanford, Junior, University in accepting this grand trust you have assumed the most weighty responsibilities, not only to the founders of the University, but to the children and youth of the Commonwealth, and to their posterity, in all time to come. You have assumed the guardianship of the vast inheritance, to which they have fallen heirs. In the near future, and thenceforth till time shall be no more, the duty will devolve upon us and our successors to

administer this inheritance in such manner as to accomplish its great end. I call to mind no instance where so large an estate has, at one time, been devoted by the same persons to the foundation of a single institution of a similar character—certainly, none to take effect during the lifetime of the donors. Since our organization, other lands with ample water rights and facilities, have been added to the estate at Palo Alto especially dedicated as the *situs* and future home of the University; so that the tract now embraces about eight thousand four hundred acres. The estate at Vina, set apart for all time, as a source of revenue, embraces about fifty-five thousand acres, of which some four thousand acres are planted in vines, already in bearing, and the remainder is devoted to various other agricultural and grazing purposes. The Gridley estate, at this time devoted largely to the production of grain, embraces an area of about twenty-two thousand acres. Since our organization, at an expense of nearly \$100,000, a winery has been erected at Vina, and furnished with vats, casks and other appliances for making and handling 300,000 gallons of wine—the product of the vineyards—and other wineries and their necessary adjuncts are now in course of construction, sufficient to afford facilities for the manufacture and handling of 1,000,000 gallons. These improvements are in pursuance of the statement, made in their address, upon the organization of the Board of Trustees, wherein the founders of the Leland Stanford, Junior, University say: “As a further assurance that the endowment will be ample to establish and maintain a University of the highest grade, we have, *by last will and testament, devised to you and your successors additional property.* We have done this as a security against the uncertainty of life, and in the hope, that, *during our lives, the full endowment may go to you.*” The aggregate of the domain thus dedicated to the founding of the University is over eighty-five thousand acres, or more than one hundred and thirty-three square miles, among the best improved and most valuable lands in the State.

The contemplation of these facts will suggest some idea of the magnitude of the responsibilities resting upon us and our successors.

CHAPTER VIII.

Solomon Heydenfeldt—An Oracle of Quiet Counsel—His Only Criminal Case—The Senatorial Contest of 1851—On the Supreme Bench and Resignation Therefrom—Other Early Supreme Judges, Hugh C. Murray, Alexander Wells, Alexander Anderson and the Patriarch, Peter H. Burnett—Reminiscences and Anecdotes of John C. Fremont, T. Butler King, John B. Weller, Wilson Flint, Henry S. Foote, Tod Robinson, Newton Booth, Solomon A. Sharp, E. D. Wheeler and Edward Norton—The Roll of Governors of California.

In another chapter has been given the incident of the lawyer who, on entering Court one day, found the McAllister family in sole but not adverse possession. They held the bench, the clerk's seat, and the bar. The lawyer withdrew softly—he didn't want to intrude. A feeling akin to his is mine, as the pensive face of another sage comes impressively into the field of view. I would not intrude into so quiet a life. The features we now see testify to serious problems solved by untiring effort, but they show lines of tenderness and sympathy that have held their place beside the imprint of absorbing thought. They speak, too, of reputation won, not in forensic encounter but in council. "Cautious, silent and laborious," as Macaulay pictured Godolphin, here is a mind that has kept tranquil amid the severest employments reaching through a long flight of time. Here is one whose lifework has been done apart from public observation. I would have to go into his office to study him. But, like Mr. Papy (in Chapter II), I don't like to intrude. However, it must not be understood that this prime character has lived and labored as a recluse. Some open views, even of him, are to be had now and then.

Solomon Heydenfeldt was born at Charleston, South Carolina, in 1816. When he was eight years old his father died, having been a teacher of ancient languages, and having been completely stripped of a considerable estate during his absence from home, by the defalcation of an agent who held his power-of-attorney. Being fortunately reared with maternal care, Solomon Heydenfeldt was sent to a college in Pennsylvania, where he studied Latin and Greek and mathematics; but he left college without graduating. Returning to Charleston he studied law in the office of the eminent advocate De Saussure, son of the great Chancellor of the Palmetto State. In the year 1837, at the age of twenty-one, he removed to Alabama, first stopping at

Montgomery, where he was admitted to the bar. He soon afterwards settled in Russell county, near the Georgia line, and practiced law in both Georgia and Alabama. In this region he married, and passed thirteen years of his life in active and successful law practice. This period of his career was, however, marked with no events of public interest. He removed to California in the spring of 1850, settling at San Francisco, and opening an office in what is now the Old City Hall. His excellent habits and business assiduity, his generous disposition, broad legal knowledge and dignified presence quickly made him a man of mark, in that era of reckless activity. He acquired a fine practice in civil business.

The only criminal case he ever had in his life was tried in the fall of 1851. For this reason it is worthy of note. Furthermore, it gives a glimpse of the loose mode of judicial procedure at that time, and presents a ludicrous instance of a jury's sense of propriety. Samuel Gallagher had killed Lewis Pollock on the night of June 22, 1851. Gallagher was tried for murder in the Fourth District Court, Delos Lake presiding, August 12, 1851. His counsel were Solomon Heydenfeldt, John B. Weller (afterwards Governor and United States Senator) and Colonel Barton. It may be said that Barton was a "Philadelphia lawyer," a beautiful speaker, a brilliant fellow, but cursed by the greatest infirmity of genius. His career was brief; he was suddenly missed at the bar, and a rumor came back that he perished at sea, a fate which some years later befell Lockwood, another legal genius with riot in his blood, who will be noticed in a subsequent chapter. The case of Gallagher was a hard one to defend. Harry Byrne, District Attorney, made a strong prosecution. Judge Heydenfeldt had the general management of the prisoner's cause, but did not address the jury. The speaking was done by Weller and Barton, the latter coming out strong and fervid. The jury disagreed. At the second trial, which occurred on November 14, 1851, Gallagher insisted that Judge Heydenfeldt should speak for him, and the Judge complied, closing the argument for the defense. The case was given to the jury at about six o'clock in the evening, the court taking a recess and Judge Heydenfeldt going into his office, which adjoined Judge Lake's courtroom, to "wait for the verdict." At nine o'clock that night the bailiff entered Judge Heydenfeldt's office and informed him that he was directed by the jury to state to him, Heydenfeldt, that they stood, firmly, seven for conviction of murder in the first degree and five for acquittal, but that if it pleased *him* (Heydenfeldt) they would agree upon a verdict of manslaughter? Judge Heydenfeldt quickly returned an expression which he afterwards had occasion many times to use while Supreme Judge, "I concur." Judge Lake was sent for, and a verdict of manslaughter was brought in. The prisoner was sentenced to three years' imprisonment and was fined \$500. Fining prisoners in capital cases, in addition to imprisonment, was quite the fashion

here in early days. The law and the courts never got so far advanced, however, as to *fine* a man and *hang* him, too. After Gallagher had been in jail—there was no State Prison then—about six months, he was pardoned by the Governor.

After the sentence of Gallagher, Judge Heydenfeldt told his friends generally of the communication between himself and the jury. Judge Lake did not learn of it until the sentence had been imposed, or, it is safe to say, there would have been a signal exhibition of judicial wrath.

The legislature which met at San Jose in January, 1851—the first session after the admission of California into the Union—was nearly evenly divided between Democrats and Whigs. On joint ballot the Democrats had a slight supremacy. When the two Houses met in convention to ballot for a United States Senator to succeed John C. Fremont, Solomon Heydenfeldt was the Democratic caucus candidate, and T. Butler King, then Collector of this port, was the Whig nominee. Fremont, it may be explained, had been elected for the short term by the legislature which met *previous* to the admission of the State, on the happening of which event (September 9, 1850) he took his seat in the United States Senate, to serve until the following March. In January, 1851, in the contest now to be noticed, he was a candidate for the succession, and received seven votes, his supporters being native Californians, (not Native Sons of the Golden West, so-called, but of Spanish and Mexican extraction). Judge Heydenfeldt, being Southern in his politics, three or four Northern Democrats, all of whom had participated in the Democratic caucus, "bolted" the caucus nomination, refusing persistently to vote for him. They voted for John W. Geary, who was afterward Governor of Pennsylvania. The legislature took no less than one hundred and forty-two ballots without an election. There was danger during the protracted struggle that Fremont's native sons would vote for King, and end the fight, in which event the Democratic bolters would not have accomplished anything of extra value, inasmuch as King was himself a proud Southron. That legislative session closed without an election of Senator. At the next session John B. Weller was chosen. But for this unexpected miscarriage, Judge Heydenfeldt would have entered the Senate in his 35th year.

His discomfiture recalls a similar fate which befell Henry S. Foote in 1856. The California legislature in that year had a large native American or Knownothing majority in the Assembly, and a majority of one in the Senate. Governor Foote, who had been Governor of Mississippi, and United States Senator from that State, was the caucus nominee for the United States Senate. But the present act of Congress governing the mode of electing Senators was not then a law, and it required the concurrence of both branches of the legislature to bring on an election. The Knownothings were not able to bring the two branches together, because

Wilson Flint, one of their party in the Senate, voted steadily with the Democrats *against* a joint convention. Flint was a hold-over Senator from San Francisco, an Independent, but had after his election joined the Knownnothings, and, in the Fall campaign of 1855, had made speeches on the stump in behalf of that party, in company with Governor Foote. The Knownnothings had intended to go into joint convention without first holding a caucus, but Flint said a caucus must be held, and one was held accordingly. Foote being nominated, Flint refused to vote for him. He was very patient under the anathemas which William I. Ferguson and others poured upon him. One reason assigned for his bolting was that in the canvass of the preceding Fall Governor Foote had written to the Knownothing State Central Committee to call Flint home, as his prosaic speeches were repelling instead of persuading the dear people. Flint heard of this letter and took his revenge. Newton Booth, elected by the Independents United States Senator in 1873, narrowly escaped the fate of Heydenfeldt and Foote. A most zealous friend of Judge Heydenfeldt in his contest for the United States Senate was Judge Stephen J. Field, then a member of the Assembly.

It was the general belief among Democrats, after the legislature adjourned, in 1851, that Judge Heydenfeldt would be the party candidate for United States Senator at the next session, one year later. But before that session opened he was nominated by the State Convention of his party for Judge of the Supreme Court. As will be readily believed, he was enthusiastically urged for this position by all the other leading men of his party who had their eyes upon the United States Senate. When the legislature next met the Democrats had a majority, and John B. Weller was sent to Washington as Fremont's successor.

Judge Heydenfeldt was elected in the Fall of 1851 a Justice of the Supreme Court, his Whig opponent being Hon. Tod Robinson, father of the well known lawyer Cornelius P. Robinson. Judge Robinson had been Judge of the Sixth Judicial District at Sacramento. He was a North Carolinian, and a lawyer of fine ability. This was the first election for Supreme Judges under the State government, the first Justices of the Supreme Court having been chosen by the legislature previous to the admission of the State. Judge Heydenfeldt succeeded Judge S. C. Hastings, and his term was for six years, commencing January 1, 1852. After only two months' service he left the State on a visit to Alabama, where he had left his family. This departure of a Supreme Judge from the State precipitated a judicial controversy, which was certain to arise sooner or later—in consequence of the inadvertence of the first constitutional convention—and which resulted in one of the most interesting adjudications to be found in all the Reports. The legislature had, a few weeks before, by a joint resolution of the two Houses, granted the judge leave of absence for six months. A month after his departure the legislature

passed an act authorizing the Governor to fill the "vacancy" by appointment; and the Governor, Bigler, immediately appointed Alexander Wells. On April 12, 1852, six days after presenting his commission, Justice Wells stated to the court that a doubt having been expressed as to the constitutionality of the act of the legislature authorizing executive appointments to supply vacancies caused by temporary absence, he would absent himself from the bench until the validity of his appointment should be adjudicated, and suggested that the Attorney General be directed to institute proceedings in the nature of a quo warranto, in order to test the question. The court directed an order to that effect to be entered on the record. The proper writ was soon afterwards issued out of the Fourth District Court, judgment was entered in favor of Justice Wells, and an appeal, upon an agreed statement in writing, was taken to the Supreme Court, where the question was argued on the part of the people by the Attorney General, who was ex-Chief Justice S. C. Hastings, while Justice Wells himself, aided by Gregory Yale and R. A. Lockwood, presented the other side. The only brief on file was Lockwood's. This brief has been retained in the new edition of the old Reports. It is a strong, logical paper—one of the very few testimonials that Lockwood left on record of his legal knowledge and acumen. The temporary retirement of Justice Wells left only two Justices on the bench—Chief Justice Murray and Justice Anderson. They disagreed in deciding the question involved. Both filed elaborate opinions, Murray holding that Justice Wells was not entitled to a seat upon the Supreme Bench, the law under which he was appointed being unconstitutional, inasmuch as the temporary absence of Judge Heydenfeldt created no vacancy in the office. Justice Anderson declared that Justice Wells' appointment was constitutional, and that he ought to take his seat upon the bench. These two early opinions are models of cogent reasoning, and engage the intelligent reader by their vigor of expression and eloquence of style; probably, in these respects, they are not eclipsed by any decision to be found in the California Reports. (Vide 2 Cal., 198.)

The concurrence of two Justices being necessary to pronounce a judgment, the Chief Justice remarked that, on the subject of resuming his seat, Justice Wells must exercise his own discretion. Justice Wells, who had brought the question into Court, "exercised his own discretion" very promptly—he took his seat on the bench. Justice Heydenfeldt returned and relieved him at the expiration of the six months' leave of absence, and immediately filed the following opinion in the case:

"When this case was first argued, opinions were delivered by the Chief Justice and Mr. Justice Anderson, and their opinions being in conflict with one another, it was necessary, in order that the case should be decided, that there should be a reargument or submission. The counsel for the respondent (Justice Wells) insists that, as the term of office in dispute has already ended, there is no necessity for a decision, and it is unusual

in such cases to make one. His position is entirely true; but, at the same time, it is always a matter of discretion with the court, whether it will be influenced by those reasons. In this case we consider the question involved as one of vast importance, and, governed by that consideration, we have determined to decide.

"The Chief Justice has advised me that his opinion already on file will be adhered to; that he will make no alteration, and considers it unnecessary to prepare any other. I have examined that opinion carefully and concur fully in its reasonings and conclusions. The whole subject has been fully examined by him, and he has so well demonstrated the unconstitutionality of the law under which the appointment of the respondent was made, that it would be supererogation to enter into any future discussion.

"The judgment of the court below is reversed; and, as we are judicially notified that the term of the respondent has expired, it is, therefore, ordered that the proceedings in the district court be dismissed."

At the new election, Justice Wells was chosen by the Democracy a Supreme Judge. He served through the year 1853, and nearly all of the year following, dying October 31, 1854. His opinions were remarkably few, nearly all the decisions of the court during his term being written by Judge Murray or Judge Heydenfeldt. He was a New Yorker and a wife and daughter survived him.

On January 6, 1857, having served five years on the bench, only one year of his term remaining, Judge Heydenfeldt resigned. His opinions are contained in volumes two to seven, inclusive, of the Reports. He left the bench because the salary did not enable him to support himself and family and other dependent relatives. He has had, ever since he came to this State, a large number of persons to provide for. Resuming practice in San Francisco, he followed it with activity and success until the Test Oath Act was passed by the legislature, which required all lawyers, as a condition precedent to the right of practice in the courts in civil cases, to take and subscribe a strongly worded oath of loyalty. A few Southern lawyers, among them Judge Heydenfeldt, Gregory Yale and E. J. Pringle, could not conscientiously subscribe to this, and accordingly withdrew from the courts. Gregory Yale had the question of the constitutionality of this act adjudicated by the Supreme Court, and that tribunal decided in favor of its constitutionality (Vide 24 Cal., 242). Hon. John F. Swift had filed an objection to Mr. Yale's appearing in the Supreme Court without taking the oath. The act was repealed several years later, but by that time Judge Heydenfeldt had obtained a lucrative office business as advisory counsel to many large firms, capitalists and corporations, and he has since steadily adhered to that department of the profession. He tried a few large mining cases in the District Court of Storey county, Nevada, at a time when a test oath act, similar to the California statute, was in operation in that State, but he was not required to take the oath, the act being treated as a dead letter. He has long been counsel for large mining corporations, is learned in mining law, as well as informed in

practical mining, and owns valuable mining interests scattered over many districts.

It is to be recorded of this gentleman, that, having done a vast amount of business for women of all conditions for many years, he has never yet charged a woman a fee, whether she was rich or poor. His beneficence has been widely felt and is unfailing in many lines. He has accumulated a large fortune, but his expenses and charities are a constant and serious drain upon it. To the yellow fever fund of the last decade, he made a princely contribution, and had it credited to "cash." In person he is diminutive, with small hands and feet, dark hair and complexion, a kind eye, well shaped head and finely chiseled features. His weight is suited to his stature, he is well preserved, and possesses distinguished dignity of manner. A man universally esteemed, he yet holds himself aloof from the people. He is not a man of the masses. I once heard him on the stump addressing a multitude of the "unterrified." He was out of place. He dislikes all gloss, and glitter, and tinsel, yet is void of arrogance or affectation. He has known sorrow, borne the burden of care, and has been thrown amid all the snares of pioneer adventure, yet his have been the mood and habit of the philosopher, and he has steadily preserved his peace of soul, and the purity of his private, public and professional life.

Judge Heydenfeldt is a widower, having been twice married. The eldest of his children, an accomplished gentleman of middle age, bears the same name and dignifies the same profession.

In the Supreme Court, sitting at San Jose, in 1853, Solomon A. Sharp of San Francisco, in the midst of an argument, was given to understand by Judge Heydenfeldt that the Court did not agree with him. He continued his argument in spite of admonitions from the bench, until finally told in plain terms that the Court was confirmed in its opinion, when he ceased to struggle, remarking, "Well, it's an honest difference of opinion." "Yes," said Judge Heydenfeldt, in his polite and quiet way, "but it's a very material one." The learned counsel showed no further sign of life.

It so happened that Solomon A. Sharp, of whom I have another laughable incident to give in another chapter, in connection with Hon. E. D. Wheeler, met that gentleman for the first time on the occasion just mentioned. These names will supply me with pleasant themes, but, not following them now, the occurrence in the Supreme Court at San Jose recalls another worth the telling. A young lawyer was arguing his first demurrer. It was in the old Twelfth District Court, and Hon. Edward Norton, afterwards a Supreme Judge, was on the bench. An adverse decision followed the young attorney's argument; still, he would not sit down. For some minutes he wrestled with the bench as if determined to change the judicial mind. "Young man," said Judge Norton, some what sternly for one so kind, "do you want to quarrel with the

court." "Not at all, sir," was the quick answer. "Very well; that is right," said the Judge gently. "You might as well learn right now that it is folly for a lawyer to quarrel with the court, for in controversies of that kind the court always has the advantage." The young man thereupon accepted the situation. He always liked Norton, and followed his advice.

Justice Alexander Anderson, who has been referred to, was an able jurist, who had, before coming to California, represented Tennessee in the United States Senate. Another Alexander Anderson, a Virginian, was once a bright light of the bar in northern California. He arrived here in May, 1854, and only seven months later, in his forty-sixth year, perished, with a large number of victims, at the most terrible boiler explosion that has ever occurred in this State—that of the steamboat Pearl, at Sacramento. His law business had called him to the Supreme Court at the Capital. His brother, John Anderson, is a lawyer at Nevada City.

The youngest Justice and the youngest Chief-Justice of all who have ever sat upon our Supreme bench, was Hugh C. Murray. Born in St. Louis, Missouri, April 22, 1825, of Scotch extraction, he was reared at Alton, Illinois, where he received a limited education and read law in a lawyer's office. When twenty-one he joined the army, and served during the Mexican war as lieutenant in the Fourteenth Regular Infantry. After that war he returned home and was admitted to the bar, but at once set out for California. Going to Panama by steamer, then, unable to get a better passage, he took a sailing vessel for San Francisco. The sailer proving intolerably slow he got off with others at Cape St. Lucas and walked the long distance thence to his destination, which he reached in September, 1849. He at once commenced the practice of law. Quite soon he was very busy, but, in a few months, the legislature elected him one of the associate justices of the Superior Court of the city of San Francisco, a court that after dispensing justice for a few years, was itself dispensed with by act of law. Murray had brought with him from the east no fame or influence or means, but on the bench of the old Superior Court he displayed so broad a knowledge of law and such superior qualities as a Judge that his appointment to the Supreme bench by Gov. McDougal in October, 1851, in place of Nathaniel Bennett, resigned, was a fulfillment of the hearty wish of the bar. He became Chief Justice upon the resignation of Hon. H. A. Lyons in 1852 and was elected his own successor by the Democracy. In 1855 he was re-elected Chief Justice by the Native American party. He died of consumption, in Sacramento, while still Chief Justice, on September 18, 1857. He had reached that high station at the age of twenty-eight, having become an Associate Justice two years earlier. Murray possessed a patient and powerful mind, capable of the severest investigation. Judge W. T. Wallace, who was Attorney-General when Murray died, declared

that the latter was gifted with an intellect that could grasp the mightiest subject; an analysis that solved, as if by intuition, the most intricate legal problems. His associate on the Supreme bench, who succeeded him as Chief Justice, testified to his quick perception, his moral courage, his justness, his frankness and fidelity, and declared that his loss was irreparable. He was, withal, a dignified and impressive speaker on the stump. In his day candidates for the bench were not exempted from the custom of active, open electioneering in behalf of their party and themselves. I heard Murray on the stump at Sacramento in 1855. His utterance was distinct, deliberate; his voice strong and very agreeable to the ear and he wore an easy dignity that seemed to reconcile his candidacy to his surroundings. He was then speaking for the new American party then about to sweep the State. "Fellow citizens," he said, "the Whig party is dead, and has been dead for ages; and the Democratic party, if not dead, is in the last throes of expiring agony." This sounded very well, indeed, and the "agony" part was given in a way that evoked loud laughter. But I felt like calling on the ermined orator to explain. His words, rolled out so grandly, were neither true of the one party, which wasn't quite dead then, nor of the other, which isn't dead yet.

Judge Murray's most elaborate opinion was his last—that in *Welch vs. Sullivan*, reported after his death, in 8 Cal., 155. Judges Terry and Burnett, who concurred in the judgment, slightly modified it at the next term—see 8 Cal., 511.

"Can you tell me who is that elderly man in the party opposite?"

"Ah, yes. And my answer will be a surprise."

We were having an after-dinner chat in the parlor of a city hotel—my friend being a distinguished man of affairs from the East. The "elderly man in the party opposite" had been talking with some gentlemen for quite a while, all standing by an open fire, and, by his tranquil bearing and benevolent aspect, had attracted the attention of the stranger.

"Well, tell me who he is?" I was asked again.

"That is Peter H. Burnett, the first Governor of the State of California," was the reply.

"Indeed! Let's see—how long has California been a State?"

"We were admitted in '50—September 9th."

"A long time ago," mused my friend, "and there stands your first Governor!"

"Yes. Did you ever see a better preserved man? He is eighty years of age, full of years and full of honors. He has also been a successful lawyer and a Supreme Judge."

"What can you tell me of him?"

"A great deal. If you can spare the time I will promise to interest you." "Go on," he said, and I proceeded leisurely.

"I have to speak of a man who has been pre-eminently the architect of his own fortune, and who enjoys a spotless fame. The State has had sixteen Governors. These have been, naming them, not in the order of merit, but according to their periods, Peter H. Burnett (whom you are now observing) John McDougal (with one 'I,' mind you), John Bigler, J. Neely Johnson, John B. Weller, Milton S. Latham, John G. Downey, Leland Stanford, Frederick F. Low, Henry H. Haight, Newton Booth, Romualdo Pacheco, William Irwin, George C. Perkins, George Stoneman and Washington Bartlett. The list, on the whole, is creditable to a young commonwealth of heterogeneous elements, and shows two or three strong and well equipped intellects. McDougal——"

"I knew him," interrupted my friend. "Where?" "In Washington." "Not so, dear sir; you confound Governor McDougal with the accomplished Senator. Didn't I tell you to mark the single 'I'?" McDougal, Downey and Pacheco were elected Lieutenant-Governors, and filled out the vacated places of Burnett, Latham and Booth. Governor Burnett was the only one who ever stepped voluntarily from that high post to private life. Latham, after an incumbency of ten days, was accredited by the legislature to serve out the remainder of the senatorial term, made vacant by the tragic death of David C. Broderick. He had lately beaten the then Governor, John B. Weller, for the Democratic nomination for Governor, and now again prevailed against him in the short, sharp fight for Broderick's vacant seat. Pacheco became Governor when Booth went to the Senate for a full term, after having been Governor for two years."

"Let me ask," my friend inquired, "the politics of these men?"

"Governors Burnett, McDougal, Bigler, Weller, Latham, Downey, Haight, Irwin, Stoneman and Bartlett were put in office by the Democratic party; Stanford, Low, Booth, Pacheco and Perkins by the Republicans, and Johnson by the Americans, or Knownothings.

"The patriarch standing there has always been cautious, reflectives laborious, and in morals stainless. His age I have told you. The majority of the restless, chafing spirits who helped to make politics in our early days an excitable and perilous pursuit, were from the Southern States. As if in compensation, it would appear, Providence gave the State in the person of it, first pilot, a Southern man of pacific soul, who through business vicissitudes, party strife and social upheavals, ever kept the even tenor of his way.

"Governor Burnett is a native of Tennessee. His father was a farmer and carpenter. The name for generations had been Burnet; the Governor was the first of the family to add a t, and all his brothers followed suit. His motive was to make the name more complete and emphatic. In youth the

precepts of one of his ancestors were imbedded in his moral being, namely: 'Pay your honest debts; never disgrace the family; help your honest and industrious kin.' His early manhood was spent in Missouri, chiefly in mercantile pursuits, in which he failed and which involved him in large indebtedness. That he might be able to cancel his obligations and restore his wife to health, he looked to the new Northwest as far back as 1843, in which year he took his wife and six children in ox teams to Oregon when the right to that territory was disputed by the United States and Great Britain. He lived in Oregon five years, aided in establishing the provisional government and cultivated land. He came to California in 1848, and after working in the northern mines for a few weeks settled at Sacramento and entered on law practice. He had been admitted to the bar in Tennessee. He became soon after his arrival the lawyer and agent of General John A. Sutter, the great landlord of Central California, and found the employment very profitable. Removing to San Francisco, where his family rejoined him, he opened a law office. His profession, his manners, his business judgment and habits of life made him speedily and favorably known. In the first Gubernatorial campaign the candidates were not nominated by regular conventions, but put forward by public meetings. Colonel J. D. Stevenson called a Democratic meeting on Portsmouth Square, and upon his nomination Peter H. Burnett was declared the Democratic nominee for Governor. Other meetings proclaimed John W. Geary (Democrat), W. S. Sherwood (Whig), John A. Sutter and W. N. Steuart (Independents). The people gave Burnett 6,716 votes, Sherwood, 3,188, Sutter 2,201, Geary 1,475, Steuart 619. Governor Burnett was inaugurated in December, 1849. Public life proved distasteful to him and he resigned in January, 1851, when the legislature was sitting at San Jose. He then resumed law practice in partnership with William T. Wallace and C. T. Ryland, who were destined to be his sons-in-law and distinguished in the history of the State. In 1852 he paid to his old business partners in Missouri the last dollar of his debts, which had aggregated \$28,740, and has never since been financially embarrassed."

"How was he as a Governor?"

"His administration was quiet and prudent. I recall nothing of striking interest which marked it. He was a business Governor. I now recollect that his last message closed with a recommendation that the law be repealed which provided that no action should be maintained for criminal conversation or seduction. He urged its entire repeal, in order, he said, that the law might throw around the chastity of our wives and daughters that protection which ought to be afforded by every civilized country. He was the first to urge the exemption of homesteads from forced sale and attachment."

"I presume he is the Nestor of your bar?"

"No; it has been many years since he was identified with our bar. He

stopped law practice in 1854 and entered on a wide course of reading. He made his first sea voyage in 1856, visiting New York City in company with his son-in-law, Mr. Ryland. He has since made two other visits to the East by sea. His last two public speeches were made in opposition to the great Vigilance Committee in 1856. In 1857 he was appointed a Supreme Judge by Governor Johnson, and filled out an unexpired part of a term, nearly two years. In 1863 he, with others, founded the Pacific Bank. For many years he was its President, resigning a year or two ago. He then laid down all business cares, and he has since led a life of strict privacy."

"Is he wealthy?"

"He has an ample fortune?"

"I judge he is entitled to it?"

"Truly so. He published in book form a few years ago the recollections of his life. In it you will find this rule laid down for the guidance of bankers and all business men. 'If a man *once* goes through insolvency or bankruptcy, or compromises with his creditors, or indulges in unreasonable expenses, he is unworthy of credit.' He says the exceptions to this rule are about one in ten. He thinks, also, that in banking the temptation to do wrong is less than in almost any other secular pursuit."

"As to his political views?"

"His father was a Whig, but the son was in boyhood made a Democrat by Duff Green's editorials. But, as he grew older, he records, in the book alluded to, and studied more deeply the science of government, he found cause to doubt the practical result of our republican theory as it now exists. He has always desired to give our theory a full and fair trial, being satisfied that so long as it can be honestly and efficiently administered, it is the best form of government for the greatest number. It is especially adapted to a young people free from extreme want, and therefore independent and virtuous. But when the population becomes dense, dependent and suffering, and for that reason more corrupt, then will come the genuine test of our existing theory; and he thinks that, without a thorough and radical amendment, it must fail; that the three principles of universal suffrage, elective officers and short terms, in their combined legitimate operation, will in due time politically demoralize any people, and that the masses will never permit a sound conservative amendment of our theory, except by revolution, which he believes will occur within the next fifty years. It may require several revolutions in succession. This he considers most probable.

"He expressed these views in 1880. In 1861, he had issued a pamphlet on the condition of the country, in which it was evident that the 'sunset of life gave him mystical lore.' He voted for Abraham Lincoln at his second election."

In turning away from this venerable, retired lawyer and banker, let me give a few passages from his book mentioned in the foregoing conversation:

If an intelligent stranger from another planet, were to visit the earth, and were the flags of all nations placed before him, he would unhesitatingly select the Stars and Stripes as the most brilliant and magnificent of them all. No one can ever look upon that flag and forget it. Besides, it is the symbol of the first great nation that ever established civil and religious liberty in its fullness and perfection. Whatever defects may exist in our theory or government can be corrected even at the expense of revolution, but the unity and integrity of the nation can never be destroyed. The day of weak, defenseless States has passed away forever. Only great Governments can succeed now or hereafter. If our country should err for a time and commit temporary injustice, we must trust her still, and patiently and lovingly wait for her returning sense of justice, as a dutiful son would for that of his father or mother. He who trusts the ultimate justice of his country will seldom be disappointed.

I never would engage in newspaper controversies or personal squabbles. If I was unjustly censured, I paid no attention to it, and gave myself no trouble about it. In this way I have mainly led a life of peace among my fellow men. I have very rarely had the sincerity of my motives called in question. The general course of the press toward me has been impartial and just. I have never claimed to be a *liberal* man, as most people construe that most indefinable term; but I have scrupulously sought to be just to all men. The character of a just man is enough for me. I esteem and reasonably desire the approbation of good men, but I love the right more. I can do without the first, but not the last.

All the close observations of a long and active life, have satisfied me beyond a doubt of the wisdom and truth of the sentiment, written some thousands of years ago, and found in the grand old Bible, "*Give me neither poverty nor riches.*"

CHAPTER IX.

Niles Searls—A Career to Animate the Young and Poor—A Start at the Bottom of the Ladder—Unloading a River Steamboat in '49—"Waiting" for an Opportunity at the Bar—On the Bench of Nevada County—Settling the Law of Mining Claims and Water Rights—A Succession of Honors—Chief Justice of the Supreme Court—Personal Notes and Pleasantries.

It was in the middle of October, 1849. The place was Sacramento. The present Chief Justice of the State of California had just found employment at unloading a river steamboat. And at that salient point the eye is first arrested in glancing along a career so eloquent of encouragement for honest youth.

He was a lawyer, even then; but very young, and had come by the Pioneer Stage Line of Turner & Allen, from St. Louis, with just money enough to see him through to the land of gold. Dr. R. H. McDonald and Louis Sloss were among his fellow-passengers. He walked along the streets of the rudely-built "City of the Plains" in as serious study as he has ever betrayed, even on the bench of justice. What was he to do! He inquired, curiously, the rental of vacant rooms, and found that \$250.00 a month was the lowest figure at which he could obtain a law office. Lacking that sum by just \$249.50 he concluded to defer to a more auspicious season resumption of professional business. Then he wandered along the river levee, until he found this "job," where he has just challenged our attention.

His pay was one dollar per hour. Three months earlier John Bigler, afterwards Governor of the State for two terms, had done the same service in the same town at *two* dollars per hour. Bigler gave better satisfaction. At the expiration of Mr. Searls' first hour the boss approached him and said: "You don't understand this business; here is your dollar for what you have done." His occupation gone, he went about the city front in pursuit of some new industry. He was struggling for life. Just then he was not thirsting for professional fame. Approaching a restaurant which bore in front the legend, "Waiter wanted," he entered. One hour thereafter he was installed. In this capacity the constant young man, forgetting his past dreams, and all unlettered as to his destiny, worked steadily away for some six months.

"Give me some pork and beans," said a strapping stalwart from the mines, as he took his seat in the restaurant one day, "and what will you

have," he asked his companion in the same breath. As they partook of their substantial meal they engaged in lively conversation. Said one of them: "If I had a lawyer worth a d——, I could win that suit." The waiter did not fail to hear this. He approached the pair as they arose, and said: "I have heard what you have been remarking about your law matters. I would like to try that case for you. I am a lawyer myself, and am *waiting* for a chance to get into business." The astonished stranger, impressed with his manner, engaged him in conversation, and the quick result was the translation of Niles Searls from the restaurant to the courtroom. He tried that case and won it, and received a fee of \$300. He had got leave of absence for a day, without acquainting his employers with the reason for his departure. The next morning he presented himself at the caravansary and announced that he desired to quit work. "What is the matter?" he was asked. "We like you very much. Anything wrong?" "On the contrary," he answered; "everything is all right, but I want to go up country." And he went, his employers throwing an old shoe after him, for luck.

This paragraph in Mr. Searls' history was not without many parallels in the lives of California pioneers. Daniel Webster Virgin, while attending the Sacramento High School, maintained himself by waiting on the table at the Casco House. He afterwards became a District Judge of Douglas County, Nevada. His fellows at the old High School will remember him, and of these are Judge John K. Alexander, Auguste Comte, Joseph M. Nougues, and other prominent lawyers. Another leading lawyer, who attained a District Judgeship in California, had worn the white apron in Sacramento. The Hon. Charles L. Scott, who so long ago represented California in Congress, and is now United States Minister to Venezuela, once kept a mush and milk stand at Campo Seco. A leading merchant, and one of the richest men living in San Francisco, once manufactured pies at a crossing of the American River, as told me by one of his customers, Dr. Washington Ayer.

With the greater part of his three hundred dollars in his pocket, Mr. Searls went to Nevada City and commenced the practice of law. Some years later when occupying a high position on the bench, and trying a case with a jury, he noticed one of the panel eyeing him intently. When the trial closed, the juror with the inquisitive eye approached him, and asked: "Judge, ain't you the feller that used to 'serve' us in Sacramento?" "I'm the man," said the Judge; and they went out and celebrated.

Judge Searls had been in Nevada city only five days when he found himself a candidate for Alcalde. Two days later the election came off. Both honors and emoluments were attached to this office. Its jurisdiction, however, was vaguely defined, though very broad. Charles Marsh, a leading citizen who had brought water into the town, warmly espoused the cause of

Judge Searls in this contest for Alcalde. But our candidate was defeated by ten votes out of several thousand cast.

In 1852 Mr. Searls was elected District Attorney of Nevada county. In 1855 he was elected, on the American or Knownothing ticket, District Judge of the Fourteenth Judicial District, comprising the counties of Sierra, Nevada and Plumas, and served a full term of six years. He was renominated by the Democrats, and was defeated by the Hon. T. B. McFarland, now an Associate Justice of the Supreme Court. In 1864 he closed his law business and went back to New York, where he followed the life of a farmer for six years. In 1870 he returned to his old mountain home in California, and resumed the practice of his profession. In 1877 he was elected to the State Senate on the Democratic ticket, and served for one session, his official term being abridged by the new constitution. A political foe to Governor Perkins, he was yet appointed by the Governor a member of the Debris Commission, and was President of the Board when the Act creating it was declared unconstitutional, in 1880.

When Judge Searls went on the bench there was a great deal of important litigation in the counties comprising his district, appertaining mainly to water rights and mining claims. The questions involved were new, and the conditions required the application of new rules and principles. It may almost be said that the law applicable to these conflicting rights, and to their peculiar properties, had to be devised and created by the judiciary. A class of titles and claims of rights existed, entirely unknown to the common law. To reconcile and adjust them required on the part of the bench more than ordinary breadth of intellect. Mere knowledge of the law, as it was written, though essential, was not enough. It was no ordinary work to administer the law, and, as it were, *make* it at the same time. There was another difficulty to overcome, which challenged a cool brain and a steady will. The bar of the counties named contained many men of strong intellect and brilliant parts, but the prior administration had been lax. Inefficiency and irregularity in practice had grown up, and it was absolutely essential to the ends of justice that this should be corrected. In all respects Judge Searls was equal to the occasion. It is claimed for him on high authority, that, while on the bench, he accomplished more than any judge in our history in settling and arranging the law relating to mining claims and water rights. He was always courteous and dignified—never tyrannical or oppressive. He always demanded the respect due his office, and gave impartial attention to all suitors.

Judge Searls was born in Albany county, New York, December 22d, 1825. His father was a farmer in easy circumstances, and of pure English extraction. His mother was a Miss Niles, of a well known family in his native county, the Niles being of Scotch descent. Abram Searls, the father of Niles Searls, removed from New York to Prince Edward district, Canada, where

he purchased land and settled with his family. Niles Searls attended school in Canada, mainly at Wellington, in Prince Edward's county. After five years' study, his father sent him, at his own request, back to his own native county in New York, where he attended the Rennselaerville Academy for three years. He then entered the law office of O. H. Chittenden of Rennselaerville, where he remained one year preparing himself for the profession. Just at that time John W. Fowler, a noted lawyer and orator, established at Cherry Valley, New York, the State and National Law School, an institution which for many years cut a conspicuous figure in legal annals. Some of the best minds of the California bar were trained at this school. Among Mr. Searls' fellows were Hon. Chancellor Hartson, and ex-Lieutenant Governor Machin. Judge Silas W. Sanderson and the late Judge Brockway afterwards attended the same school. Mr. Searls graduated from this institution after two years' study. His old schoolmates speak of him as having been an indefatigable student and one of the brightest minds of their class. He excelled in mathematics and scientific branches of study, and was an omnivorous reader. He was admitted to the bar of the Supreme Court of the State of New York, May 2d, 1848, and went West, traveling through Kentucky, Illinois and Missouri, practicing a short time in the latter State. He is a California pioneer, as shown by the opening sentence of this chapter.

In the spring of 1885, Judge Searls was appointed by the Supreme Court one of the three Supreme Court Commissioners, under an act of the legislature then recently approved. This Commission was an auxiliary court in intent and effect, and was created on account of the accumulation of business in our highest tribunal, threatening to block its action. The Judge had labored most efficiently for two years on this Commission, when, on April 19, 1887, he accepted from Governor Bartlett the appointment of Chief Justice of the Supreme Court, made vacant by the death of Hon. Robert F. Morrison. The Governor in this instance showed the good judgment which always marked his public acts, the appointee having the general confidence of the people and the press, and being very acceptable to all the other supreme judges. His ripe experience at the bar and long identification with the judiciary of the State, added to other qualities and capabilities, peculiarly endow him for the highest seat of justice. In mind and body he gives promise of many years of efficient service in his distinguished but laborious office. *Finis coronat opus.*

The Chief Justice is a man of strong character, he has a handsome presence, and engaging manners, an unbending will, and great pertinacity in investigation; a remarkable faculty of grasping a whole case; and sees at a glance the relative bearing of each particular part. He is eloquent on occasion, ready at repartee and has won many triumphs before juries, gaining their confidence by the evident frankness and fairness of his statements. As a citizen he is

held in universal esteem, being liberal to a fault, pure in his private life, and always ready to lead any enterprise *pro bono publico*. He is a man of bright wit and broad knowledge. Like nearly every good lawyer, he has a humorous vein and a large fund of anecdotes, and likes a practical joke. He once fined Francis J. Dunn \$50 for contempt of court—the contempt being tardiness. Dunn was an able, though eccentric and dissipated man, of whom many good things are said. “I did not know I was late, your honor,” said Dunn. “I have no watch, and I will never be able to get one if I have to pay the fines your honor imposes upon me.” (He had been fined before). Then, after a little reflection, Dunn said, “Will your honor lend me \$50 to pay this last fine?” “Mr. Clerk,” said Judge Searls, “remit that fine. The State can afford to lose it better than I can.” And the fine was remitted.

He was in the East just at the close of the war, and visited “Dixie” with a party of friends, including the late George A. Lancaster and the late Asa D. Nudd. At one town which they reached on Sunday they visited a colored Sabbath School. Lancaster introduced the Judge as a clergyman, and he was invited to take charge of the school for that occasion. He accepted the situation, and, it is said, acquitted himself with distinguished credit.

Judge Searls married, in his native county in 1853, Miss Mary C. Niles, sister of his last law partner, ex-Supreme Judge Niles. He has two children, sons, one of them a lawyer, lately associated with him professionally, and the other a mechanical engineer.

CHAPTER X.

A. P. Catlin, of Sacramento—An Historical Chapter—The Squatter Riots of 1850—Broderick's Struggle for the United States Senate—The Peck-Palmer Bribery Trial—Memorable Meeting Between E. D. Baker and C. H. S. Williams—Locating the State Capital—Attempts To Extend the San Francisco City Front—The First Vigilance Committee of the Bay City—Trial of "The Hounds"—Impeachment of State Treasurer Bates—Long Litigation over the Town of Folsom—Allusions to Prominent Men of Early Times.

All of the eminent men thus far observed belonged originally to the bar of our metropolis, or early became identified therewith, excepting the present Chief Justice. In looking out again, from the central point of view, over the array of leadership in the interior, there rises to the mind, at the capital city, a notable figure that will repay the most intelligent study. The subject of unqualified respect throughout the State his fame is yet peculiarly associated with Sacramento, to which he has held even when she sank under floods or disappeared in tempests of fire. Author, too, of the act locating the seat of government permanently, after its long unrest, the fancy, by a little indulgence, sees him pictured to coming times as standing under the dome of the Capitol, and upholding its historic arches on Atlantean shoulders.

A. P. Catlin was born at Tivoli, Dutchess County, New York, in January, 1823. Thomas Catlin, first of the name known in America, came from the county of Kent, England, in 1643, and settled in Hartford, Connecticut. His posterity for five generations, including Pierce Catlin, father of A. P., were born in Connecticut. David, A. P. Catlin's grandfather, was a captain in the Connecticut militia, and was in the action in which General Wooster was killed—the attack by the British General, Tryon, on the town of Danbury. He died at the age of ninety-three. His son, Pierce Catlin, was a school teacher, then a wagonmaker, afterwards a farmer. He died aged eighty-four. A. P. Catlin's ancestors on his mother's side were Germans. The first of the line came to America and settled in Dutchess County, New York, April, A. D. 1700.

A. P. Catlin graduated at Kingston Academy, Ulster County, New York in 1840. He studied law in Kingston, three and a half years, in the office of Forsyth & Linderman, both of whom were distinguished lawyers of eastern New York, and was admitted to the bar of the Supreme Court of New York

at Albany (Nelson, Cowen and Bronson, Justices), on the 12th of January, 1844; and to the old Court of Chancery as a solicitor by Walworth, Chancellor, on the 16th of the same month. He practiced about four years in Ulster County, where he frequently met as antagonists, in forensic battle, John Currey, afterwards Chief Justice of our Supreme Court; William Fullerton, the Judge Fullerton afterwards distinguished as counsel in the Beecher trial; T. R. Westbrook, later one of the Judges of the Supreme Court of New York; and other young attorneys who afterwards made their mark in the Empire State. In the spring of 1848 he removed to the City of New York, and formed a partnership with George Catlin. Before leaving Ulster County he had successfully conducted an important litigation, in which he had for his client the Spanish Consul, resident in the City of New York, who had been sued in the State courts of Ulster County upon a contract liability. Mr. Catlin pleaded the consular privilege of answering only in a federal court, a privilege which was vigorously disputed, and he succeeded in ousting the State court of jurisdiction.

On the 8th of January, 1849, he sailed in the brig David Henshaw for San Francisco, arriving in that port on the 8th of the following July. Here, in the brief sojourn of a month, he witnessed the organization of the first Vigilance Committee, the formation of the revolutionary court that tried the "Hounds," their trial, and concurrent scenes. That court was constituted of Dr. William M. Gwin, James T. Ward, and Thaddeus M. Leavenworth. The first two were elected by the acclamation of a crowd of citizens on Portsmouth Square, to sit with Leavenworth, who was the Alcalde and the only lawful authority. The Alcalde at first refused to recognize his associates in any capacity other than as mere *amici curiæ*. Dr. Gwin declined to act unless he and his associate, Ward, were acknowledged as of equal authority with the Alcalde. The latter functionary was compelled, by the open threats of the excited citizens, who suspected him of partiality to the "Hounds," to yield the point. Some ten or twelve of the defendants were convicted and sentenced to imprisonment for various terms, the highest being fourteen years. But there was no prison. The excitement of which the court was born had passed away before the trials were concluded, and this tribunal was powerless to enforce the execution of its decrees. The prisoners were, however, delivered to the commander of the United States sloop of war Warren, and were soon after discharged, as it was understood, by order of the Secretary of the Navy. T. M. Leavenworth, after whom Leavenworth street was named, had formerly been an Episcopal clergyman at Staten Island, New York. He came to California as Chaplain of Stevenson's Regiment, and had been appointed by competent authority, Alcalde of San Francisco. Catlin was personally acquainted with him, through letters of introduction from some of his old parishioners, and sympathized with him in the severe ordeal to which

he was subjected by the Vigilance Committee; and endeavored to support his authority. The Alcalde desired to appoint Mr. Catlin counsel to defend the "Hounds," and offered to pay for the service by grants of city lots, which he had unquestioned power to make. Catlin could not accept the employment, for the reason that at this time he was under a double contract with the master of the ship David Henshaw, and five of her sailors—first, that the sailors would work for the captain thirty days in putting his cargo ashore, and next, to take the sailors with him (Catlin) to the mines, and share with them in his proposed mining adventure, for which he had brought from New York a costly outfit of machinery. Hall McAllister conducted the prosecution and Judge Barry the defense of the prisoners.

Mr. Catlin reached the mines in the vicinity of Mormon Island, Sacramento County, in August, 1849. He passed the following winter there, engaged in mining and practicing law before Duncan, the Alcalde of that district. Upon his arrival there he found that office held by a son of Esek Cowen, who was formerly one of the Justices of the Supreme Court of New York, and who wrote a useful treatise upon Justices' Courts. Upon the resignation of young Cowen, Duncan was appointed by Judge Thomas, Judge of First Instance, and his authority was recognized as absolute in all cases by a large population, and over an extended territory without limit of jurisdiction as to value or character of property involved, until the legislature in April, 1850, provided for justices of the peace. Returning to Sacramento in May, 1850, Mr. Catlin there met John Currey. They immediately formed a co-partnership, and opened a law office. Among the leaders of the Sacramento bar at this time were Murray Morrison, E. J. C. Kewen, Colonel Zabriskie, Jos. W. Winans, J. Neely Johnson, John B. Weller, M. S. Latham, John H. McKune and Philip L. Edwards. This partnership continued for a short time. The climate prostrated Mr. Currey, who soon retired to San Francisco.

Mr. Catlin witnessed the squatter riots, and the conflict on the corner of Fourth and J streets, between the authorities of Sacramento City and the rioters, on the fourteenth of August, 1850. On that day Woodland, the City Assessor, was killed, and Biglow, the Mayor, was mortally wounded. Others were killed in the same fight, among them Maloney, the leader of the squatters. Dr. Charles Robinson, who afterwards became Governor of Kansas, was severely wounded. On the following day, in a continuation of the same fight, a few miles out of the city, McKinney, the Sheriff of the county, and several others were killed. (The widow of McKinney afterwards married Mr. Wright, a hardware merchant of Marysville. Mr. John A. Paxton, the banker, married her sister). The excitement was great, and the city authorities, fearing an assault from the friends of the rioters, who were supposed to be gathering in the country and mining sections for that purpose, made their situation known to the authorities at San Francisco. John W. Geary, then

Mayor of the last named city, (afterwards Governor of Pennsylvania, and Major General in the Union army) came to their assistance with two San Francisco military companies, one of them commanded by the late Captain W. D. M. Howard. It soon proved that the assistance was not needed, and that rumors operating upon an excited and terrified populace had greatly exaggerated the supposed dangers.

Late in the Fall of 1850 Mr. Catlin closed his law office in Sacramento, and returned to Mormon Island, being employed to settle the affairs of the Connecticut Mining and Trading Company, which was the successor in interest of the famous store and business of Samuel Brannan, and to attend to the mining interests which he had acquired in that vicinity in the summer of 1849, and winter of '49-'50. Just then Wm. L. Goggin, the agent of the Post-office Department for this coast, visited Mormon Island for the purpose of establishing a Postoffice there. He requested Mr. Catlin to furnish a name for the office. Mr. Catlin had already formed the "Natoma" Mining Company, adopting that name from the Indian dialect, it signifying "clear water," and a tradition that such had been, among the Indians, the name by which that locality had formerly been known. Goggin adopted the name, and that section of Sacramento county was officially named "Natoma township."

Mr. Catlin was always a Whig, as long as there was a remnant of the old party. He was placed on the Whig ticket as a nominee for the Assembly in 1851, and was with the whole ticket defeated at the September election, when Pierson B. Reading was defeated by John Bigler for Governor. In the following year he was nominated for State Senator, and was elected at the presidential election, when General Scott was the Whig candidate for President. He served in that capacity for two years, the sessions of the legislature being held at Vallejo, Benicia and Sacramento. During those two years he rendered important service in many matters of legislation. He introduced a homestead bill, the same as that which afterwards became law, but which was then, after a hot contest, defeated by the casting vote of the Lieutenant Governor. His own constituents of Sacramento were faithfully served in much needed local legislation, and in the important matter of the State Capital. He was the author of the law, making Sacramento the permanent seat of government of the State.

The final anchorage of this ark of the political covenant, which had floated from San Jose, its original seat, to Vallejo, thence to Sacramento, back to San Jose, again to Vallejo, thence to Benicia, where it was found by the members elect on the first of January, 1854, was the result of the determination and sagacity of the Sacramento Senator. During the session of 1853, the early part of which was spent at Vallejo, and the remainder at Benicia, he made no open, decided movement in behalf of Sacramento. The time was unpropitious for many reasons, among which was the fact that

Sacramento during the most of that winter, was submerged by a flood. The Benicians procured the passage of a bill by a two-thirds vote, making Benicia the seat of government. They entertained the mistaken notion, that it could not be removed by less than the same vote. This idea arose from the fact that the constitution had fixed the seat of government at San Jose, and provided that it should so remain until removed from that place by a two-thirds vote of the legislature. In the first removal to Vallejo this vote had been obtained; but it was always contended, by the San Joseans, until the question, years afterward, was decided against them by the Supreme Court, that this constitutional requisition of a two-thirds vote to remove from San Jose, had not been satisfied, because the passage of the removal act had been procured by means of a contract on the part of General Vallejo to provide the State with a suitable capitol building, which contract had not been performed. By some curious process of reasoning, the Benicians appropriated this idea to their own use and benefit, and relied upon it with seeming composure. At the opening of the session in January, 1854, a strong Sacramento lobby, furnished liberally with the means of paying expenses by an appropriation by the City Council, went to Benicia, confident of their ability to procure the passage of a resolution to hold the session at Sacramento. They did not think it possible to procure the passage of an act *fixing* the capital at Sacramento while the legislature was in session at Benicia, but were of the belief that it was necessary first to get the legislature to hold the session at Sacramento, and that during such session an act making Sacramento the permanent seat of government could be passed. Senator Catlin, upon whom they mainly relied, did not concur in this opinion, and advised against the temporary expedient proposed. He urged his constituents to labor for the passage of a bill fixing the seat of government at Sacramento after the close of the pending session. In this he was overruled. The Sacramentans were twice beaten during the month of January in vigorous efforts—first by a concurrent resolution, and next by a joint resolution to adjourn and meet at Sacramento. They retired from the field, and went home thoroughly disheartened, and with little hope of ever seeing their city made the capital of the State. Catlin requested them not to return; informed them that he intended in due time to make another effort, in which their aid was not needed, and which their presence would thwart, by causing extra activity and exertion on the part of the Benicia lobby, which had been too powerful for them in the contests which had just ended.

Early in February Mr. Catlin introduced the bill for the act, which is now the law, and which is found in the statute of 1854, page 21, of which the first section reads: "From and after *one day after passage of this act* the permanent seat of government of this State shall be, and the same is hereby

located at, the City of Sacramento, in the County of Sacramento." The second section repealed all other acts establishing the seat of government. The peculiar provision providing for the *time* when the act should take effect, unlike any ever seen in a statute, was the Senator's invention, to avoid a difficulty which had before been experienced from parliamentary motions extending the time for the final vote beyond the day named for removal. Upon the introduction of the bill, Charles H. Bryan, Senator from Yuba, arose and moved that the bill be rejected—a motion known in parliamentary law, though rarely used. He said "it was an insult to the Senate for the Senator from Sacramento to bring that measure again before the legislature after it had been twice defeated." In reply our friend reminded him that it was the first time that a bill for an act had been offered, and the first time that the full merits of the question of *permanently* locating the seat of government had been presented. The measure was assailed with more violence than argument. It is sufficient to say that, after encountering some narrow escapes in its progress to a third reading, the bill became a law on the 25th of February. It received the signature of Governor Bigler the moment it was delivered to him. The following day was the last the legislature could legally sit at Benicia. It merely met and adjourned, to meet at the new capital on the 1st of March, 1854. The people of Sacramento did not receive the intelligence until after the bill had passed, and were much astonished at so suddenly receiving the boon which they supposed was irrevocably lost and for which they had made a four years' struggle.

The constitutionality of the act was tested, and was affirmed by the Supreme Court. Charles H. Bryan, the Senator who had so savagely opposed the act, was then on the Supreme bench, and held that the act was constitutional.

At this session, and while the legislature was yet at Benicia, occurred one of the most remarkable trials on record, though very little record of it remains. A prolonged and determined effort was made to elect David C. Broderick, Northern Democrat, United States Senator. It was claimed by the Whigs, of whom there were seven in the Senate, and by the supporters of Dr. Gwin, Southern Democrat, that as the term for which Broderick was a candidate did not commence until after the next session of the legislature, it would be an unconstitutional act to elect at that time, and so take the election from the body to which it rightfully belonged. This argument had no weight with the supporters of Broderick, who had a large majority of friends in the Assembly, but, as it turned out, only one-half of the Senate. At that time the legislature could be called immediately into joint convention by a concurrent resolution. The struggle, therefore, was to put such a resolution through the Senate. Broderick's election would, at any time during the session, have resulted in twenty-four hours after the adoption of such a

resolution by the Senate. The forces upon this question stood so evenly divided in the Senate that Broderick lacked but one vote, and this it was impossible to obtain. The contest continued through the greater part of the session, and the utmost vigilance was required on the part of those who opposed the election. There were exceedingly few of the Senators whose firmness on either side of the question could be doubted. The position of each one of them was made known by more than one test vote. The situation was such that if any one of them had, in his own conscience, been convinced that it was his duty to change, it would have worked his political ruin to follow his conscience.

Peck, one of those who had steadily voted against going into joint convention, was Senator from Butte county; a country merchant, of little experience in public affairs. At one of the most critical periods of the senatorial contest, Senator Peck arose to a question of privilege. He charged that Joseph C. Palmer, who was the head of the most important banking institution in San Francisco, and an active friend of Broderick, had attempted to bribe him with an offer of \$5,000, to vote in favor of going into joint convention to elect a United States Senator. A resolution followed, summoning Palmer to answer for a breach of the privilege of the Senate, and ordering his arrest. A day was fixed to hear the matter. General Charles H. S. Williams, one of the ablest lawyers ever in this State, was retained as Palmer's counsel, and Colonel E. D. Baker was engaged by the friends of Peck.

It was evident that a mighty struggle was to take place when such giants took the field. Peck's statement was made on the 19th of January, and the trial was concluded on the 3d of February. A large number of witnesses were examined. Palmer escaped through a single dexterous movement of his counsel. It had been informally agreed by all the Senators who were political debaters, that they would permit the trial to proceed without interference on their part, except to vote upon questions as they arose, without debate, and that they should act the part of decorous and impartial judges. Colonel Baker, an orator of profound thought and of more eloquent expression than any of his day and generation, (see Chapter I) was yet no match for General Williams in the management and conduct of a trial. When all was ready and the Senators had settled in their seats and duly put on the air of judges, Palmer was called to the bar. As the accused approached the Secretary's table, General Williams requested, in a quiet and matter-of-fact way, that he be sworn. The Secretary administered the oath, no objection coming from any quarter. Palmer immediately proceeded to relate his story, and had proceeded but a few moments, when it was clearly manifested to the sense of every one present that the act of allowing Palmer to be put on the stand as a sworn witness, was a grave oversight. But it was then too late to repair the error. Palmer swore that he met Senator Peck on the steamer at

the time stated by Peck, and that the latter had in explicit terms proposed to him, Palmer, to vote for Broderick if he, Palmer, would give him \$5,000, which proposition he, Palmer, courteously declined, and that was all there was of it.

Thus the character of the investigation was at once changed. Palmer became the accuser of Peck, and was on the stand as a sworn witness in support of his charge. This was before the law permitted a party to be a witness in his own behalf in either a criminal or a civil case. Peck had made his statement upon his honor as a Senator, and in no sense as a witness, except in so far as his constitutional oath of office bound him to speak the truth. He was not required to be sworn as a witness. He was a poor, obscure, unimportant, and comparatively friendless, country member. Palmer was a power in the State. Under these circumstances this strange trial proceeded. There was, of course, no witness to the interview, and, therefore, every fact tending to support the statement of either party became important.

At the close of the testimony, some two days were spent by the Senate in determining whether Colonel Baker should have the opening and close of the argument, or whether General Williams should have that privilege; and some half dozen votes, by yeas and nays, are recorded in the journal, upon various propositions regulating the order of the summing up, without coming to an agreement, until at last the chivalrous spirit of Colonel Baker prompted him to request that General Williams should have the opening and close.

There was one striking feature of this remarkable controversy. While it was fought with the utmost tenacity on both sides, there was an entire concurrence on the part of those opposing the election and supporting Peck—that Broderick had no lot or part in the alleged attempt to bribe, and that he was as unconscious of any proceedings of that character being taken in his behalf as if he had been at the bottom of the sea.

The speeches of Colonel Baker and General Williams occupied two days. The former never, in all his brilliant career, made a more powerful address. And yet no remnant of it has been preserved. The extraordinary circumstances of the case challenged his powers in all their versatility. Palmer and A. A. Selover reeled under his invective. The "Selover Route" from San Francisco to Benicia has not faded from the memory of those who heard Baker then.

The Senate went into secret session, and there voted without debate. It was in a serious dilemma. There did not appear to be much doubt of Peck's honesty—none whatever of his imprudence in blurting out such a charge against a man of Palmer's standing, with no witness to prove it. The journals show that the Senate extricated itself as follows. Hall, Democrat, of El Dorado, moved the following resolution:

Resolved, That the statement made by the Hon. Senator from Butte, Mr. Peck, alleging against J. C. Palmer an attempt to commit bribery, has not been sustained by the evidence adduced in the investigation.

Many attempts were made to modify the original resolution offered by Hall, but it passed by a vote of 21 to 7. Catlin was among those voting in the negative. Immediately upon the adoption of the resolution Crabbe, Whig, of San Joaquin, offered the following:

Resolved, That this decision of the Senate in this case is not intended in any degree to reflect upon the honor and dignity of Mr. Peck.

This received 17 votes, with but one (Mr. Mahoney, Democrat of San Francisco), against it; ten Senators not voting. Whether Peck or Palmer won the fight has never been determined. The case offers some solemn lessons to young statesmen, as well as to members of the third house. Never attempt to bribe anybody. If you are offered a bribe, decline it, and, instead of pocketing the money, pocket the insult as quietly as circumstances will permit, unless it should happen (which is quite improbable) that you are able to prove the offer by other evidence than your own statement.

During the session of 1853 Mr. Catlin rendered important service to the city of San Francisco, and, in fact, to the whole State, in contributing largely to the defeat of the scheme to extend the city front 600 feet further into the bay. The city front was established by an act of the legislature passed in 1851; and another act in the same year authorized the construction of wharves at the end of the streets, not exceeding 600 feet beyond the water front boundary line. Certain parties claimed title to a tract 600 feet wide extending (a semi-circle) from North Beach to Mission Bay, in front of the established boundary line; and the scheme involved the repeal of the act of 1851, and the extension of the city front so as to take in the tract so claimed. The parties interested acknowledged that the State had some interest in the matter, and offered the State one-third of the property. Gov. Bigler was persuaded to believe, and honestly believed, the plan unobjectionable, and that it would be the means of relieving the State treasury from its then impoverished condition, and so he earnestly supported it, not only in his annual message, and in a special message to the legislature, but gave to it all his personal influence, which was very great, especially with the members from the interior and mountain counties. The measure also enlisted a powerful support in San Francisco, as millions depended upon its success. The whole extension tract was laid out in city lots, and the claimants had speculated largely in the sale of them.

The whole matter was referred in the Senate to a select committee, of which Mr. Catlin was a most industrious and active member. An investigation was held, and all questions, such as nature of the title claimed, effects upon the harbor, etc., were inquired into. Mr. Catlin was a known and

avowed opponent of the measure, and to him was committed the duty of writing the report, which duty was so well performed that it absolutely killed the scheme outright.

Governor Bigler was so disappointed and indignant, that he publicly proclaimed in the lobby of the Senate that he would take the stump in the ensuing season and advocate the measure "from San Diego to the Oregon line." But he did not, and he never afterwards advocated an extension of the city front. Every argument advanced in support of the scheme was overthrown, and the evil consequences which would surely follow its success were forcibly set forth in this report. It saved the city and harbor from vast injury, and time has verified the wisdom of those who set their faces against the accomplishment of this scheme. For strength of argument and deep research into the many vital questions affecting that controversy, this report, which may be found in the journals of the fourth session of the legislature, will bear favorable comparison with any public document in the archives of the State.

In 1854, after service in the State Senate for two years, Mr. Catlin's standing in the Whig party was such that he was tendered one of the nominations for Congress, but he declined it, and promoted the nominations of General (then Major) G. W. Bowie and Calhoun Benham. The Democratic party was then divided, but the Whigs were solid and hopeful. Milton S. Latham and James A. McDougall were then in Congress, and were renominated by the Freesoil wing of the Democracy. Latham refused to stand. Phil. T. Herbert and J. W. Denver were nominated by the Musical Hall or Chivalry wing. At the commencement of the canvass the latter apparently had not any chance of success, but later on it became known that they had received the secret nomination of the Knownothings, then first organized, and being a secret order. Their election was nevertheless a surprise to the State.

J. Neely Johnson, a Sacramento lawyer, was nominated and elected Governor by the regular Knownothings in 1855. During the short life of this party, whose existence practically ended at the close of the legislative session of 1856, Mr. Catlin eschewed public affairs, and devoted himself to his profession and his mining interests.

In the summer of 1856 a convention composed of about forty persons, constituted of "Old Line Whigs" and ex-Knownothings, nominated a ticket for the legislature, upon which they placed Mr. Catlin and Robert C. Clark (the latter afterwards County Judge and later Superior Judge), as Whigs, with two ex-Knownothings. During the Knownothing regime Colonel Philip L. Edwards had maintained a club of Old Line Whigs, of which Catlin and Clark were members, and which *boasted* 500 members. The two nominees, with little faith in the strength of the nomination, and both averse to making a canvass, which is always demanded in Sacramento county, at first resolutely declined, but were afterward persuaded and flattered into ac-

cepting the nominations. They were elected (to the Assembly) together with one other on their ticket—John H. McKune, afterward District Judge—while one of the Democratic nominees prevailed over Dr. Powell, the lowest on the combination ticket. Dr. Powell is dead. He practiced medicine, but was an inveterate politician. He was one of the most entertaining stump speakers of his day.

That legislative session opened in January, 1857. The most stirring and important event of the session was one in which Mr. Catlin acted a conspicuous part—the impeachment of Henry Bates, the State Treasurer. Early in the session vague rumors prevailed that all was not right in the treasury. At the instance of the Treasurer's friends a joint committee of both Houses counted the coin in the treasury on the 13th of January, 1857, and reported that, since the first of that month, the Treasurer had taken from the general fund \$124,000 and forwarded the same to New York to meet the semi-annual interest, to become due on the first of July next ensuing, upon the funded debt of the State, and that \$130,000 in coin remained in the treasury. These two sums would make the Treasurer's account good, according to the Controller's books. His action in sending so large a sum to New York more than four months before it was necessary, was excused by the committee as an overzealous act in the interest of the State; and was openly commended by the *Democratic Journal*, the organ of the Democracy at the capital, as a provident act, by which the legislature was prevented from squandering the money! The Assembly was largely Democratic, and was, apparently, satisfied with these explanations. Bates was a Knownothing. But there were a few members, prominent among whom was Mr. Catlin, who assailed this report, and openly expressed doubts as to the existence of the facts upon which it was based. It was verbally stated, in behalf of the Treasurer, that the \$124,000 was sent to New York through Wells, Fargo & Co., a statement calculated to allay suspicion as to the safety of the funds, and one quite necessary to allay such suspicion, by reason of the fact that twice before—once under a former Treasurer, and once under Bates himself, when the transmission of the money had been intrusted to Palmer; Cook & Co.—default in the payment of the interest had been made. It resulted from the debate that the Assembly, by resolution, immediately placed Mr. Catlin, much against his will, at the head of a select committee of three, with full power to send for persons and papers, and to investigate and speedily report upon the whole subject. He was thus suddenly placed in a position where he was made to assume the responsibility of charges which had been insinuated, rather than specifically made; and this, by the majority who believed in and supported the report of the Joint Committee. His position was critical. If he failed the Treasurer would triumph; and he, Catlin, would suffer heavily in public estimation. At this time he had never seen Bates, and never met him per-

sonally until the latter afterwards appeared before the committee. The Treasurer's friends, at first, were not at all alarmed. Their confidence that no discoveries could be made detrimental to him was manifested in newspapers, and in many other ways. But Mr. Catlin soon, through the favor of a prominent banker, now deceased, and through other sources, became possessed of information which enabled him to summon witnesses, by whose testimony he completely uncovered the most carefully concealed but most stupendous frauds. This testimony positively established the fact that the joint committee, in the count of the 13th of January, had been deceived; that fully one-half of the coin found in the vaults on that occasion had been temporarily supplied by outside parties and had been withdrawn the next day. It was also proved that the \$124,000 payment was a pretence; that it had not in fact been sent to New York, but was a fraudulent contrivance to account for so much money previously abstracted from the Treasury. It appeared that an entry was made on the Treasurer's books on the 10th of January, stating that the money was sent to New York by Wells, Fargo & Co. This was the entry that met the eye of the joint committee on the 13th. After it was known that Wells, Fargo & Co. denied having received or sent the money, the name of "Wells, Fargo & Co.," was carefully erased and the name of "Pacific Express Co.," written over the erasure. This "company" was an ephemeral concern, of which the chief clerk of the Treasurer was President and manager. It was also proved by testimony that could not be denied, that during the whole time of the Treasurer's administration, Palmer, Cook & Co. had nearly all of the public moneys; that in July, 1866, when by the Controller's books there should have been about \$250,000 in coin in the vaults, there was in fact only about \$16,000 there, and that was removed and deposited with Wells, Fargo & Co. under a scare on the part of the Treasurer, who one day heard that the Vigilance Committee was on the way up the river to capture the State Government. Such a conquest, by the way, if it had happened before the Treasurer removed the funds, would have exposed the nakedness of the treasury.

It is due to the memory of the unfortunate Treasurer to say that it did not appear that he had personally profited a cent by his defalcations, which, by Mr. Catlin's report, amounted in the aggregate to the sum of \$200,000, during the brief period of one year. He was a physician by profession, with little experience in, and no taste for, public affairs. His nomination had been procured, against his own wishes, by Palmer, Cook & Co., one of the members of which firm was his boyhood companion and friend. He had accepted the office with reluctance, and had, in fact, with an apparent unconsciousness of wrong, allowed that firm to administer it. He had implicit confidence in their financial soundness, and in their promise to make good the moneys used by them when required. This promise could not be fulfilled, as the banking

house was in fact then insolvent, and its necessities compelled it to abandon the Treasurer to his fate, after making the best fight possible to protect him by a concealment of the defalcation. The end can be told in a few words. Upon the reading of Catlin's report to the Assembly, on the 9th of February, the Treasurer was invited to make any explanations he desired at twelve o'clock the next day. This he declined, stating that important business required his immediate departure for San Francisco, and asking delay. The response to this was the unanimous passage of a resolution impeaching him for misdemeanors in office, and the appointment of a Board of Managers, of which Mr. Catlin was one, to prepare articles for presentation to the Senate. Before these articles could be prepared he resigned his office. The resignation was accepted by the Governor, and a successor appointed and installed in office—an operation that was accomplished in less than twenty-four hours. Upon the hearing before the Senate, Bates was represented by a strong array of counsel, among whom were Charles T. Botts and Joseph W. Winans. The only defense made was that the accused, being out of office, was not subject to judgment of impeachment. The managers contended that he was impeached by the Assembly while in office, and could not escape a trial by resigning his office, and this view was sustained by the Senate, and the judgment usual in such cases was pronounced.

It was at this session that Broderick and Gwin were both elected United States Senators. Mr. Catlin voted for neither of them, but with sixteen others voted for Henry A. Crabbe and James W. Coffroth.

In March, 1872, Mr. Catlin was appointed one of three members of the then State Board of Equalization, and served as such until April, 1876. The most effective powers conferred on the board by the legislature were, after a prolonged contest, declared unconstitutional by three of the five judges of the Supreme Court, which led to the abolition of the board. During this period he was in the active practice of his profession, but found time to perform prodigious labor in the board named.

In 1875 Mr. Catlin was brought forward as a candidate for Governor before the Independent State Convention, but was defeated by the combined votes of the supporters of John Bidwell and Mr. Estee, which, on the final ballot, were cast for General Bidwell. In 1878 he was nominated by the joint convention of the Republicans and Democrats of Sacramento county, as delegate to the Constitutional Convention, but in consequence of the recent death of his wife and other causes, he declined the nomination. In 1879 he was one of the nominees of the Republican party for one of the seven Justices of the re-organized Supreme Court, and was defeated with all but one on his ticket.

Mr. Catlin's legal practice has been varied and extensive in the United States District and Circuit Courts in this State, in the courts of San Francisco,

in Sacramento and adjoining counties, and in the State Supreme Court. While in the active business of his profession he found time to perform to the satisfaction of the proprietors of the old Sacramento *Union*, the duties of chief editor of that paper at different times for considerable periods, and more particularly from September, 1864, at the commencement of the second Lincoln campaign, to April, 1865. His political articles were generally acknowledged to be just and fair by the Democratic opponents of the war, against whom they were aimed. He criticised Seward's English diplomacy, and condemned the surrender of Mason and Slidell. He supported Juarez through all his trials, and justified the execution of Maximilian in an editorial entitled "The End of a Tyrant," which attracted wide attention from its sentiments and style of expression. It was copied in Spanish in leading Mexican papers. In the course of ten years he successfully defended the Sacramento *Union* in eight different actions for libel.

Among the most notable and important litigations successfully conducted by Mr. Catlin, was the Leidesdorff ranch case. The title of the Rancho Rio de los Americanos, in Sacramento county, was confirmed by the Land Commissioners in 1855, *with specific boundaries*, and by the United States District Court in 1857. The Attorney General of the United States had dismissed an appeal in the case. These boundaries included the town of Folsom and the improvements of the Natoma Water Company upon several thousand acres of land. The water company and the inhabitants of Folsom engaged Mr. Catlin to examine the title, and he having pronounced it good they purchased the lands occupied by them of the executors of Folsom, and paid for them. Soon afterwards, in 1858, Hon. Jacob Thompson, Secretary of the Interior, summarily, and as Mr. Catlin always contended, without authority, set aside the survey of the rancho, which survey had strictly followed the boundary lines specified in the decree of confirmation, and ordered a new survey in a particular manner, by which the town of Folsom and the lands of the water company were excluded. There was no recourse against the executors of Folsom; and the parties who had thus lost their lands and their money naturally looked to Mr. Catlin for relief. He first contested the new survey in the Land Department, and afterwards in the United States District Court. He succeeded in setting aside the Thompson survey; but the one which followed it was but little better. It restored part of the lands to the water company, but still left out the town of Folsom. He succeeded in setting aside this survey and procuring a decree establishing the original survey, under which his clients purchased. From this decree the Government appealed, and the case came up for argument in the United States Supreme Court at the December term, 1863. Mr. Catlin went to Washington, was admitted to the Supreme Court on motion of Judge Jere Black, and after waiting four months reached the argument of the case. He was heard for

the greater part of two days. The case was exceedingly complicated, and the principles applicable to it were unsettled. The form of the survey was at first sight objectionable, and he entered upon the argument with the whole court against him, except Judge Field, who, as a Judge of the Supreme Court of this State, had become familiar with the principles of law applicable to the case. Mr. Catlin won six of the nine Justices over to his views, and obtained a decision affirming the original survey, upon which the patent subsequently was issued. Thus was finally settled the title, and a litigation was terminated, to which Mr. Catlin had devoted six years of earnest work. His clients had acted upon his advice in purchasing the property. He felt the weight of the obligation, and made good his purpose of maintaining the soundness of his opinion by a long struggle against the government, in which he overcame obstacles which would have discouraged a less determined nature. Like Mr. S. M. Wilson, he was on the losing side of the great issue between the farmers and the miners, being one of the six counsel for the Gold Run Mining Company in the trial of 1882, involving the rights of hydraulic miners. He conducted the examination of the witnesses upon some of the important branches of the case. His argument was confined to the facts, and did not deal with the law of the case. He contended that the testimony showed that the defendant's mining operations did not contribute in any appreciable degree to the injuries complained of.

Mr. Catlin is a man of indefatigable industry, of very sound judgment, and great power of investigation. He is one of the safest of counselors, unswerving in his fidelity to his clients, and a good man every way. In speech and argument he is slow but earnest. He has had little to do with criminal business. Having a good memory he can tell a thousand interesting reminiscences of early times in California. He is slow to anger, has no vices, possesses a generous nature, and, although little given to sport or humor, and having a serious, stern, almost morose look, is gentle in spirit and as tender as a woman. He is careless about money matters, doesn't think of his own needs—of what he shall eat, or what he shall drink, or wherewithal he shall be clothed. But this is hardly a blemish in *him*. A man of pure life, broad knowledge, and strong brain, he still holds a good clientage, and is the junior by some years of a score of men who are leaders at the bar of the State. He owns a very fine library, in which he takes more delight than in society, politics, or external nature. A California pioneer, familiar with all the motley scenes of time's latest drama, he is just touching upon the borders of a serene old age, the venerated confidant of the public, "Whole in himself, a common good."

CHAPTER XI.

John T. Doyle—Some Interesting Cases in New York and California—The Suit of Gov. Price, of New Jersey, against Squire P. Dewey and Gen. E. D. Keyes—The Convivial Wit, Sam. Ward—History of the "Pious Fund" of the Catholic Church—A Notable Argument—Peter Donahue Brought to Terms—R. J. Vandewater Taken At His Word—A Judicious Friend of Young Men—The Story of Col. C. P. Egan, United States Army—Some Interesting Personal Points.

John T. Doyle was born in New York City. His father had come thither from Ireland in 1815, himself a remarkable man with an original mind. He, the father, opened a bookstore in New York City and made a competency. His place was a literary center, and the circle of his friends was very large. He became widely known for his unfailing humor, his urbanity, his gifts of conversation, and his critical knowledge of books. Closing his business in 1851, he removed with his family to San Francisco, and died there at a great age. But he never got old. He could tell a story with a most solemn face. He loved to go to theaters, was fond of young people, ardent and sunny in temperament, full of romance, a passionate lover of the beautiful and poetic, and drank "the wine of life" to the very last.

John T. Doyle graduated from Georgetown College, District of Columbia, in 1837, taking the first honors. He studied law under Dudley Selden in New York City, where he commenced practice in 1842. There he formed a partnership with Eugene Casserly, which lasted a few years. In 1850, being in bad health, he turned away from the profession, and accepted the position of superintendent of the Nicaragua Canal Company, of which the elder Vanderbilt was the chief spirit. After remaining in Nicaragua eighteen months, he returned to New York. In 1851 he came to San Francisco with his father's entire family, excepting his younger brother Emmet, who had arrived in 1849.

Mr. Doyle's long life at the bar in San Francisco was broken by his removal to his native city, whither he went in 1856 and where he remained about three years. During that period he was in partnership for a time with Mr. Rapallo, afterwards a Judge of the New York Court of Appeals, and Horace F. Clark, a son-in-law of the elder Vanderbilt. He also served for awhile as assistant district attorney. A great case which he successfully

defended in New York will be noticed below. Returning to San Francisco in 1859, he resumed law practice there, and has ever since been one of the largest figures at that bar. Since his first arrival in 1851, he has been in partnership, at different times, with Eugene Casserly, with Janes & Barber, with Janes, Barber & Noyes, with Janes, Barber & Boyd, with Barber, Scripture & Bugbee—his firm now being Doyle, Galpin & Scripture, (Philip G. Galpin and Henry D. Scripture).

In 1876 Mr. Doyle was appointed by Governor Irwin one of the Commissioners of Transportation (Railroad Commissioner), his associates being General George Stoneman (afterwards Governor) and Isaac W. Smith. That was generally applauded as an able and faithful and industrious commission. The report submitted by it to the legislature at the close of the year 1877, was the product of the most patient investigation. It covers, with its tables and exhibits, a large octavo volume of nearly 500 pages. Mr. Doyle made railroad problems, questions of fares and freights, etc., a serious study for many years. On all matters affecting railroads he came to be popularly regarded as being better informed than any other man in the State. He was known as a strong anti-railroad man, and a stern anti-monopolist. He was prominent in the Committee of One Hundred during the excitement in regard to the possible occupancy of Goat Island by the railroad company, in 1871.

Mr. Doyle is a fine representative of the leaders of the New York bar. The conditions of law practice in that great city are such as to develop a class of minds not seen elsewhere. He has a strong, fertile, and acute brain, is thoroughly grounded in the law, is quick, sharp, ready and full. He is a clear and logical reasoner, has an eminently practical mind, and is a genius in the line of devising remedies. His addresses to the bench are models of legal argument, and if he is stronger before juries, as many say, it is because of his rich and perennial humor. He is fluent in speech, forcible, hardly eloquent, never repeats and never hesitates. He does not select his words or phrases in advance. In addressing a jury Mr. Doyle has a habit of singling out one man, as soon as he catches one interested, and talking to him alone for several minutes at a time. He keeps the jury in good humor. His facts are presented with admirable system, and in a very entertaining way. When he has a case naturally dry and tedious he informs it with life and refreshes it from his inexhaustible fund of merriment. A wonderful intuition is his. Both bench and bar have the greatest respect for his genius, and no intelligent stranger can talk with him half an hour without being impressed with the dignity of his intellect.

Perhaps the greatest law suit which ever engaged his attention was that of Rodman M. Price against Squire P. Dewey and other prominent citizens of San Francisco. This was in New York City. Price, whilom Governor of New Jersey, was, during the Mexican war, and some years after the ac-

quisition of California, a purser in the United States Navy. His vessel entered San Francisco harbor about the time of the conquest, and Price came ashore and walked about and around the little city with his eyes wide open. He bought real estate, and was soon a rich man, but kept his place in the navy for some years longer. Returning to the Eastern States early in 1850, he left his power of attorney with Edmund Scott. In the summer of 1851, he was in San Francisco a few months, and again departed, having substituted General E. D. Keyes, of the army, as his attorney-in-fact in place of Scott, who was about to visit South America. The next year Scott returned, and Price gave a new power of attorney to Keyes and Scott jointly. In the spring of 1853, Price held thirty-one pieces of real estate in the heart of the city, including the old postoffice. They were assessed low—in the aggregate, \$73,400, and were heavily mortgaged; besides Price had a large floating unsecured indebtedness. The first of July was approaching, when a law would take effect, permitting foreign creditors to attach real estate. Keyes and Scott apprehended that their principal would be swamped by foreclosures and attachments, and they determined to "clean up" before July first. They sold all the property for \$135,000, to Theodore Payne and Squire P. Dewey, the purchasers to assume the mortgages. The property speedily rose in value, and Price's indignation at the sale rose in proportion. He declared that the property had been needlessly sacrificed. Some two or three years later he commenced suit for damages in New York City, against Payne, Dewey, Keyes and Scott, alleging that they had conspired to defraud him of his property, and laying his damages at \$500,000. Dewey being then in New York City, Price had him arrested just as he was about to take the steamer for Europe. He was released on bail in the sum of \$25,000.

The trial of this case was a great and costly struggle. Mr. Doyle, who was then, as intimated, residing in New York City, was attorney for Dewey. He had a commission directed to Robert F. Morrison (since Chief Justice of the Supreme Court), who took, on behalf of the defendants, the depositions of prominent citizens of San Francisco. These included Judge M. H. McAllister, Hall McAllister, Horace P. Janes, James T. Boyd, Elisha Cook, Horace Hawes, A. J. Bowie, John Caperton, Milo Hoadley, A. G. Abell, Michael Reese, James Lick, Judge Edward Norton, Colonel E. D. Baker, Lafayette Maynard, Benjamin Davidson, George W. Wright, George Gordon and C. V. Gillespie. The interrogatories and cross interrogatories were all framed in New York, the former numbering 103, the "cross" 144.

Price's principal friend in the fight was Sam. Ward. This man was a member of a New York banking house, a great wit, a most engaging talker, and of distinguished good fellowship, peculiarly so on convivial occasions. He once was United States Minister to Brazil, and afterwards passed most of his time in Washington. Judge Field speaks of him favorably in his auto-

biography. Ward, too, had lived in San Francisco, was acquainted with Price's affairs, and knew all the parties to the suit under notice. He made a strong affidavit in the case on the side of his friend Price. He swore that the property was worth when sold \$300,000, and that Payne and Dewey had realized from a sale of five-sixths of it, in six week's time, a profit of \$300,000. He implicated Michael Reese in the alleged conspiracy, and said some severe things about General Keyes. The latter made a counter affidavit, in which he hit back with vigor, as this short extract will illustrate:

"And deponent further saith that, from July 1, 1853, to January 1, 1854, his intimacy with said Samuel Ward was greater than it had ever been before with any man for the same length of time. Deponent saw him almost daily, and was so charmed with the liveliness of his wit, his knowledge of languages, his skill in gastronomy, his rotund, expansive appreciation of good wine, his easy practice of those flattering arts which enable him to spend so much money while he earns so little, that deponent was allured by him to slide away from the wonted austerity of his life and to give up much of his time to feasting and vain discourses, greatly to deponent's reproach as a sedate citizen, and, as he fears, to the hazard of his soul."

The pleadings, testimony, etc., in this case were printed, and comprise several large volumes. To come to the result, it was a signal victory for Mr. Doyle's client. It was about the year 1880 that Governor Price visited San Francisco again, and renewed the litigation, seeking to set aside the conveyance to Payne and Dewey, and also suing Dewey for libel. He failed again, and went back to the State which had once made him its Governor, a poor man.

Mr. Doyle's celebrated cases are too numerous to name. I come to the great effort of his life. This was over the Pious Fund.

"In the ages of faith, before the day
When men were too proud to weep or pray,"

the Catholic church of Mexico owned a very large amount of real and personal property in that country, which had been contributed by different individuals and societies, for the propagation of the Catholic faith among the inhabitants of Upper California and Lower California, for the endowment of the church in those territories, and for the maintenance of its ministers. This vast property became known as the "Pious Fund of the Californias," and the most munificent contributions thereto were made on the 8th day of June, 1735, by the Marquis de Villapiente, and his cousin, the Marchioness de las Torres de Rada. Their gifts, made by a joint deed, consisted of 450,000 acres of land, many farmhouses, chapels of worship, furniture, stores, merchandise, grain, large bands of sheep, hogs, horses, mules, cows and horned cattle. The lands conveyed, which were valued at the time at \$400,000, came to be worth many millions.

I take this impressive narrative from the record in the case :

The piety and benevolence of the Marquis Villapiente have had few parallels in history. It is recorded of him, in Alegre's "History of the Society of Jesus in New Spain," published in 1739, that he contributed to every pious enterprise, thanking the Almighty for every opportunity to do good. It was his rule, in relieving temporal wants, never to forego spiritual comfort. He was the apostle of many peoples and nations. His beneficence penetrated all the continents. He remitted to Africa large sums to ransom Christian captives, and founded at Algiers a hospital for their succor and spiritual consolation. He expended \$100,000 for the building of churches and support of missionaries in China and Japan. In Macao he founded a home of mercy for the rescue of foundlings found in the streets. He supported, by the expenditure of enormous sums, flourishing churches in the kingdoms of Travancor, Ternate, Madure and Coromandel. In the Philippines he founded a presidio of Boholan Indians as a protection against the attacks of the Mohammedans. The Church of Pondecheri, in the East Indies, was built by him. He sent large sums of money to Jerusalem for the ornament of the holy places and the security of pious pilgrims. In Europe he defrayed the whole expenses preceding the beatification of the venerable Father Luis de la Puente; rebuilt and re-endowed the College of Santander; built and endowed the College and Church of the Cave of Manessa; laid the foundation of a College of Missionaries at the castle of Xavier, in Navarre; served Philip V with a regiment of 570 men, armed and maintained at his own expense, for nearly a year and a half, for which service the King tendered him the viceroyalty of Mexico, and which he declined. In America he gave daily alms to the poor and afflicted, bestowed numerous dowries on virtuous maidens, chapels and pious works, spent \$80,000 in building the convent of St. Joseph, of the Barefooted Franciscan Friars, at Tacubaya, and over \$200,000 in missions, vessels, and other necessities of California. He founded in Arizona the two missions of Busonic and Sonoydad, changing the name San Marcelo, by which the latter was called, to San Miguel, from devotion to the latter saint; contributed \$10,000 to the college of Caraces; \$10,000 to that of Havanas; and another \$10,000 toward founding a house of religious exercises in the City of Mexico.

Living to extreme old age, he made a pilgrimage to the house of Nazareth and the city of Loretto, in a garment of coarse cloth, under a vow not to shave his beard till he had offered up his devotions in that sacred place; distributed alms on every hand, made munificent offerings to the Holy Virgin; visited Rome, returned to Spain, and there gave away all the rest of his vast property, even down to his cloak; he then sought hospitality in the Imperial College at Madrid, where he made his vows with tenderness and devotion, to the edification of the whole court. He died on the 13th day of February, 1739.

The "Pious Fund," thus swelled by the munificence of the Marquis and Marchioness named, was held in trust by the Jesuits, who had charge of the Missions of California down to 1768, when, by order of the Spanish Crown, they were expelled from Mexico and California. The Missions were then turned over by the viceroy, first, to the Franciscan order; later, one-half to that order, the other half to the Dominican friars. In April, 1772, Lower California was assigned exclusively to the Dominicans, and Upper California to the Franciscans. The Crown fully recognized that it held the "Pious Fund" as a sacred trust, and devoted the income and product, through the ecclesiastical authorities, to the religious uses designed by the donors.

When Mexico became independent, her government succeeded as trustee

of the "Pious Fund." In 1836 the fund was, by act of the Mexican Congress, turned over to the Bishop of the Californias, Pope Gregory XVI having erected the two territories into an Episcopal Diocese. In February, 1842, by another decree of Santa Anna, all the property of the trust was sold for the sum represented by its income (capitalized on the basis of six per cent per annum) and the proceeds were paid into the public treasury, the government obligating itself to pay six per cent on the capital thereof thenceforth.

The property was bought (the bulk of it) by the house of Boraio and the Messrs. Rubio Brothers for two millions of dollars, to which was added over one million dollars previously borrowed by the government from the fund—making the total amount on which the government bound itself to pay six per cent per annum interest in perpetuity, exceed three millions. The Bishop of California remonstrated earnestly against this last decree, as being in violation of his rights and the law of 1836. In 1845 the General Congress restored to the Bishop and his successors the properties of the trust *which had not been sold*. When California passed under the American flag, payments from the "Pious Fund" by the Mexican government to the Catholic church here totally ceased.

By the convention of July 4, 1868, between the two Republics, the American and Mexican Joint Commission was constituted, to sit at Washington, and pass on all claims presented by citizens of either country against the government of the other. In the Fall of 1870, a memorial was presented to this body by Archbishop Alemany, Right Rev. Thaddeus Amat, Bishop of Monterey, and Right Rev. Eugene O'Connell, Bishop of Grass Valley, on behalf of the Catholic church in California, asking that an apportionment be made between Upper and Lower California, of the interest accrued on the "Pious Fund" since the treaty of Queretaro, and payment to the petitioners, in trust for the church, of the amount due the latter in this State. Mr. Doyle was the counsel for the church. He went to Washington and tried the case before the commission. He found opposed to him the ablest talent. The Mexican government had engaged Caleb Cushing and sent Don Manuel Aspiros to assist him. Mr. Doyle had, as attorney for the church magistrates, laid this claim before the Department of State eleven years previously, and this was one of the principal claims for the settlement of which the joint commission was created. He appeared before this latter body without any original documents, those papers all being in the archives of the Mexican government, but he was thoroughly fortified with evidence and argument. The eminent counsel for Mexico moved to dismiss the claim as stating no cause of action. Mr. Doyle then supplemented his lengthy memorial with an elaborate statement and argument of forty printed pages. These and his other briefs in the case have been published, but copies are very rare. In his first argument he states that he examined carefully every book, document, and scrap of Mexican history that he could find, hav-

ing the least bearing on the subject, including many public documents not to be found in published works. It was ably urged, on behalf of Mexico, that the Bishops of the church in California were not the proper parties to make the demand; that the "Pious Fund" had been confiscated to the Mexican government; that the claim was barred by article XIV of the treaty of peace, which released Mexico from all claims of United States citizens; and, further, that the Archbishop and Bishops claimant, being local corporations, could not claim property outside of their dioceses. In reply, Mr. Doyle argued (to reverse the order of these propositions) that all corporations are local in the same sense—viz., that they have some local *habitat*, and derive their corporate powers from some local law—but they may own property, and maintain and defend suits outside of the territory of the States which create them. There is no distinction in this respect between religious corporations and those organized for trade. If property belonging to an English Cathedral Church is wrongfully removed to the United States, the Bishop of such church, or the diocesan authority, entitled to the custody of its temporalities, can recover it in any United States court of competent jurisdiction. Besides, this is not a question of corporation law. The Bishops claimant, whether incorporated or not, can rightly press this claim, because they are the constituted authorities of the church. As to the claim being barred by the treaty, Mr. Doyle showed that Mexico was released by that compact only from such claims as had not *then* been decided against her, and which arose *previously* to the *date* of the treaty (February 2, 1848). At that date this claim was not a claim by citizens of the United States; it was by persons who were *then Mexican citizens*—the church of California being *then* part of the church of Mexico, and its political status being that of a Mexican citizen. This status was changed by the treaty—at the *ratification* of the treaty. *Then* it ceased to be Mexican and became American, and *thenceforth only* did its demands on Mexico become claims of United States citizens.

As to confiscation, Mr. Doyle traced the history of the fund from the time it was taken from the original trustees down to the decree of October, 1842, under which it was incorporated into the public treasury. In that decree Santa Ana declared it was the intention of the government to "fulfill most faithfully the beneficent objects designed by the founders, without the slightest diminution of the properties to the end," and "without any deduction for costs, whether of administration, or otherwise." Neither the Spanish nor Mexican government ever claimed the right, or exercised the power, of diverting the fund from its original purpose.

From this printed argument I take this specimen of unpretentious, vigorous style:

History furnishes frequent instances where the poverty of the public treasury, the rapacity of the monarch, or the cupidity of a favorite, has led to the spoliation of chari-

ties and other church properties. Such acts have usually been cloaked under the disguise of reform of abuses, or excused by the plea of great public necessity. The atheistical zealots of the French revolution were, I believe, the first to invent the idea that property dedicated to such uses was public or national property; but their acts in confiscating and treating it as such were condemned by the voice of all Europe, and repudiated, so far as possible, by France herself as soon as she began to recover from her delirium. Partisans, writing what they call history, have sought to excuse such acts in various ways, and philosophers have sometimes viewed them leniently, discovering in their remote consequences public benefits proceeding from individual wrong; but I am not aware of any instance where an independent tribunal, constituted to administer justice, has ever given them its sanction, or regarded them otherwise than as acts of mere arbitrary power, without legal justification.

In dealing with the proposition that the Bishops were not the proper parties to present the claim, Mr. Doyle displayed rare powers of argument and gave signal proof of the truth of his own statement, that he had given to this great cause the unwearied investigation of years. He evinced close acquaintance with ecclesiastical and profane history, declared the canon law applicable to the case, showed that the Bishops claimant were the only persons who could properly present the claim, and, in the course of his argument, took occasion to thus tersely restate his case:

Mexico, holding the Pious Fund of California upon trust for the use and benefit of the Catholic Church of California, being both *sovereign* and *trustee*, and having the entire power over the trust, not amenable to any court or tribunal, formally determines to appropriate the whole means and property to her own use, and substitute for it her own obligation to pay interest on the capital at six per cent. per annum, thenceforth. She is both purchaser and seller, fixes the price, the credit and the rate of interest without consulting the *cestui que trust*. The latter is powerless to resist the proceeding. All she can do is to demand performance of the promise which, without her consent, has been substituted for her tangible property. Her chief magistrates, recognized over and over again by Mexico, as representing her in this regard, are here demanding on her behalf the enforcement of the obligation; if they are not the proper parties to do so, it is not easy to see who are. * * * The Bishops represent fairly the numerous body of Christian people over whom their spiritual jurisdiction extends, and would for that reason be competent plaintiffs on behalf of the whole body, even before a court of equity, where technical rules are rigidly enforced. Tribunals like the present, (the joint commission) are not trammelled by such rules, but proceed upon the broad foundation of substantial justice.

Don Manuel Aspiros made an ingenious plea on behalf of his government, showing great learning; but in his reply Mr. Doyle politely revealed its utter fallacy. When he had done with his adversary, the *dissecta membra* of the Mexican lawyer's argument presented a sorry spectacle. Mr. Doyle recovered for his clients, at the end of this long and hard fought fight, nine hundred and six thousand dollars. He was amply rewarded for his great services, being paid a more than princely fee.

Mr. Doyle has strong convictions, is a good friend and an implacable enemy. Of warm impulses, he is yet very arbitrary. He has been a hard

worker through life, and is exact and methodical about everything. He has the truest judgment, is plain and concise in statement, intrepid in assertion and in action. His information is very wide, his memory excellent, he has rich classical stores, is one of the best of Latin scholars, and has a Latin quotation ready for any emergency. Horace is his favorite Latin author; he quotes him *ad libitum*. He has a great turn for mathematics. In diplomacy he would win great distinction. As a negotiator he is the peer of Lloyd Tevis. He negotiated the sale of the San Jose Railroad by Dame and McLaughlin, the builders, to H. M. Newhall, Peter Donahue and C. B. Polhemus. He represented the purchasers, and urged upon them to reduce rates. They declined, but he gave them no peace till they yielded, and they soon saw the wisdom of the policy.

This firm counselor held Peter Donahue's power of attorney, when that gentlemen went East, during the conflict between the two gas companies of San Francisco, now many years ago. He effected a compromise between, and a consolidation of, those companies. A very respectable bill was that which he presented to Mr. Donahue on the latter's return, for he knows how to charge. Mr. Donahue declined to pay the whole of it, and Mr. Doyle would not abate one cent. He did not want to sue Mr. Donahue, and for some time did not know what course to pursue. Learning that an act was about to pass the legislature, granting Mr. Donahue and associates a street railroad franchise in San Francisco, Mr. Doyle hastened to Sacramento, and quietly got an eight hours clause inserted in the proposed measure. A few days later he received a check for his full demand. Then he lost his interest in the eight hours clause, and the bill passed without it.

He handed R. J. Vandewater a large bill, one day, in his (Doyle's) office. Vandewater said it was unreasonable, extortionate, and surprised him—one-half of the charge would be too much. But he would leave it to Mr. Doyle's sense of propriety. He asked Mr. Doyle to sit down and make out a check for whatever sum he thought was just, after having heard his (Vandewater's) protest. "Recollect what I have said, and make out the check, and I will sign it," said Vandewater. Mr. Doyle sat down and made out a check for the full amount of his bill. Vandewater signed it and left the office, to which he never returned.

This bar leader has materially helped many youths, and advised, encouraged and guided them. Many lawyers look back to his office as the place where they first opened their books, and found help in study. He has no patience with stupidity, and when he finds a boy is dull he lets him severely alone. He is very much attracted by brightness and alertness in boys. In this connection may be told a pleasant story, and a true one of the relation once existing between him and a little boy who is now a Colonel in the United States Army. The boy's parents were poor people, living in New

York City. He was a bright lad employed in a lawyer's office. Mr. Doyle took a fancy to him and brought him to San Francisco at his own request and that of his parents, and employed him in his office here. Fearing the young man might get beyond his (Mr. Doyle's) control as he grew up, and might fall into bad company, Mr. Doyle exacted a promise on honor that at any time he required it, the lad would return to his parents. Finding better employment for him than in a law office, he got him the situation, and thereafter the young man worked his own way and pushed on by his own merit. After some time Mr. Doyle thought his young friend was getting on too fast (wherein he may have done him injustice) and reclaimed his promise to go back to New York. The latter begged hard to be released from his obligation, but Mr. Doyle said: "You gave me your honor, my son: I expect you to keep your word." The boy was only about fourteen, but he was made of the right stuff, and he answered, "I'll keep my word, sir." He went to his parents. Subsequently he returned to this State on his own responsibility, and shaped his own fortunes. What he owed and owes to Mr. Doyle were the opportunity of first coming to the region of his prosperity, and the good will and friendship which Mr. Doyle has ever since felt for him. Reference is here made to Colonel C. P. Eagan, U. S. A.

Mr. Doyle is a capital diner-out; indeed, in that delectable role, he would not suffer eclipse in the presence of Sam Ward himself. There his wit sparkles and his information pours continuous. His stories and his sallies are entirely free from blasphemy, vulgarity, or slang. Social, but not much given to club life, he likes a fine dinner, is an excellent judge of wine, and is very hospitable. He has a keen appreciation of the very best in everything. His library is a wonderful repository of varied lore. In the rarity and beauty as well as the value of its volumes, it has few parallels. Of course, he loves Shakespeare; he has every edition of the master's works. His "Don Quixote" is a marvel, too; he has the text of one of the best editions, bound up with the illustrations of *all* the editions, and the work is so skillfully done as to suggest but one original and complete book.

His father, having the most absolute confidence in his integrity and ability, left his entire estate to him by will. He (John T.) called the natural heirs together, and said he should hold the estate in trust, and make an equal distribution, which he did. In association with his father, Governor Haight, Eugene Casserly, and others, he bought the Pulgas rancho and sold it in small parcels. He straightened out the title, laid out Menlo Park, and built a fine residence there. He married, in New York City, about 1856, Miss Pons, a French lady, a native of Lyons. The lady is living, and there are five sons and three daughters—all of whom speak French as fluently as their mother—if I said as fluently as their father, it would be the same. Mr. Doyle is very strong in his family ties—perhaps a more intelligent and happy

family group cannot be found than his. He has one brother, already mentioned, and a sister—the widow of Eugene Casserly. At the age of sixty-seven years, with an estate worth half a million dollars, he still holds to the work of his life, and comes to San Francisco every other day from his home at Menlo Park. There he has a lovely villa, with some 400 acres of rich land. A few years ago he bought a vineyard near Mountain View, Santa Clara County, and has been making the finest wine in the State, as the sales in the market attest. He also planted 150 acres more with the choicest cuttings. He superintends his vineyards personally. His main object in this industry is to lengthen his own life, to give to his boys healthful employment while he survives, and to leave them a noble heritage.

CHAPTER XII.

Alexander Campbell—A Reputation Early Won at the Brooklyn Bar—District Attorney of King's County, New York—Another California Pioneer—Peculiar Controversy Over the Office of County Judge in San Francisco—A Dejected Grand Jury—References to Some Celebrated Cases—His Address in the Fair Murder Trial—Personal and Professional Traits.

I come to one who long enjoyed the distinction of being the first criminal lawyer at the San Francisco bar. In the public mind he was associated with criminal trials, and it is true that he had shown himself at his best in that role; but this was because he had more business, and, therefore, more opportunity, in that department of law. Of course a lawyer, even of the first class, cannot always, nor often, control the course or character of his professional work. The people have much to do with deciding whether a lawyer must confine himself to a special line of cases. As was observed of McAllister, they frequently persist in assigning a lawyer to a specialty, when he has none. An advocate may, and often does, at the outset of his career, by a masterly effort, establish a local reputation for special aptitude and ability in a particular line, when he is really entitled to a more catholic judgment, a broader fame. He will inevitably become involved with his cause, and the more close his devotion to any cause, the more apt is he to be assigned to the class to which such cause belongs. If he signalize his entry upon the active duties of his profession, by a powerful prosecution or a brilliant defense of a great criminal, he will win the reputation of a criminal lawyer, and will be fortunate if afterwards he can build up and wield a general practice; while if it be a great land case that shall disclose the riches of his intellect and the stores of his erudition, he will probably do a land business, if not a "land office business," the remainder of his life. But those whose lots are cast in sparsely settled communities, where the division of labor is never strongly marked, are not so affected.

It is not by his own preference that ex-Judge Campbell has devoted most of his time to criminal practice. It is distasteful to him to be assigned to any specialty. He loves the law in its integrity, and disclaims having special fitness for any particular branch. It is not strange, however, that having been called, in very early manhood, to be the public prosecutor in the

great center of American life, criminal practice should thereafter engage his principal attention.

Alexander Campbell was born in Jamaica in the year 1820. That beautiful little island has been the birthplace of a number of great men. There was born Sir James Scarlett, Lord Abinger (1769-1844), represented as one of the most popular and prosperous advocates of his day; who enjoyed for many years, in London, a practice of £10,000 per annum. He was Solicitor General (1829) and Chief Baron of the Exchequer (1834). There was born Robert Charles Dallas (1754-1824), a British author, an extensive writer on history, natural history, biography and fiction. He was once the warm friend of Byron, but the two came to disagree. There, too, was born the brother of the last named, Alexander James Dallas, father of George Mifflin Dallas, Vice President of the United States during the Mexican war. He became one of the most distinguished of American lawyers. He was born the same year with "Bobby" Burns, and died in 1817. He was Secretary of the Treasury. His law reports are the oldest in the United States except Kirby's. Lord Mansfield declared them to be "creditable to the court, the bar and the reporter." This Dallas drew up the marriage contract between Jerome Bonaparte and Miss Patterson, of Baltimore, in 1803.

Mr. Campbell's father was a Scotchman, as was the father of Robert and A. J. Dallas, and was a planter in Jamaica. Upon the abolition of slavery in the island, he removed with his family to Canada. He sent Alexander to England, and gave him what is sometimes called here a grammar school education. The young man went to Brooklyn, New York, when he was sixteen years old. The oft-used expression "architect of his own fortune," may be applied to him, if to anybody—which I sometimes doubt. He did not inherit a dollar. Not to dwell upon his youthful struggles, he is found honestly and earnestly acquiring a knowledge of law. At his majority he is admitted to practice, and for some years follows his profession successfully, attracting the notice of his seniors by his correct judgment, and his lucid, impressive method of argument. Before he is 30 years old he has been City Attorney of Brooklyn, and District Attorney of King's County. In the latter office he has won a reputation for being an indefatigable, sometimes a fierce, prosecutor of public offenders, whether they operated singly or in bands, cliques or rings.

Mr. Campbell first came to San Francisco in August, 1849. He had been practising at the bar a little over a year when he became County Judge in a novel way, or rather at the end of a novel legal controversy. William H. Clark, another pioneer, was regularly elected County Judge at an election appointed by law. On the very day of the election, while the voting was in progress, the legislature, then sitting, passed a law repealing the act under which the election was being held, and conferred upon the Governor the

power to appoint a County Judge. The Governor approved this repealing act *on the same day*, and a few days thereafter appointed Alexander Campbell County Judge. A conflict arose between Messrs. Clark and Campbell, which was carried before the Fourth District Court by *quo warranto*, and thence on appeal to the Supreme Court, resulting in a triumph for Campbell; it being held that the repealing act took effect *on the day of the election* and before the voting terminated, and that the election was therefore void. The decision of the Supreme Court in this case was rendered by Judge S. C. Hastings, Judge Lyons concurring. There were only three members of the court at that day. Judge Bennett, the remaining member, expressed his dissent, declaring that the repealing act did not take place until the day after the election, and that, therefore, the result of the election could not be disturbed by the legislative enactment. It was agreed that the repealing act took effect from and after its passage. Judges Hastings and Lyons held that it took effect the very moment the Governor signed it. Judge Bennett held that an act taking effect from and after its passage, does not become operative until the next day after its passage. (First Cal. Reports, 406).

By virtue of his position as County Judge, Judge Campbell was Presiding Justice of the Court of Sessions, which tribunal was composed of the County Judge and two Justices of the Peace as Associate Justices. While the Court of Sessions was sitting one day—present, Alexander Campbell, presiding Judge, and Edward McGowan, associate—an event occurred which probably has no parallel in legal annals. It was the ninth day of September, 1851. The grand jury came into court, and through their foreman, presented and read a written request to be discharged, on the ground that the executive, Gov. McDougal, had pardoned “a certain criminal, a notorious enemy of peaceable men.” The court refused to discharge the jury. Judge Campbell remarked that if the jury were to be discharged upon the ground set forth in their report, the court could not refuse, if requested, to discharge the next grand jury; and the next; and not only that, but every officer of the law might, with the same propriety, desert his post and abandon his duties, and so leave the country in anarchy. The grand jurors, having relieved themselves in some measure, returned to their duties.

Judge Campbell resigned his seat on the bench about six months before the expiration of his term, and was succeeded by Judge T. W. Freelon. He resumed law practice, which he pursued until the organization of the Vigilance Committee of 1856, when, as Dickens said of London, in describing the religious riots, “the city rose like a great ocean.” On account of his opposition to that organization, he withdrew to the Sandwich Islands, for a year. He returned and resumed practice in 1857. From that time until 1881, when he again removed from the city, he was a conspicuous figure at the metropolitan bar.

It is pleasant to see a lawyer now and then break the monotony of his professional life by touching other fields—as those of literature and science. But Judge Campbell has never done this. He has never employed his pen to probe any theme; he has never spoken on any subject but law, with a single exception, when he appeared on the lecture platform in Oakland for the benefit of a religious organization. He is a great reader of miscellany, doing his reading at night. Walter Scott is his favorite author.

He is not a hard worker, nor a close student. He funded in early manhood a large store of information—legal and miscellaneous—a store which always honors his drafts. Of course, like any lawyer worthy of the name, he keeps himself well posted on the Supreme Court decisions, but that is about all the regular legal reading he does. It cannot be said that he ever neglects his case, but he relies chiefly on his native tact and the abundant resources of his mind. He has also, as was said of Burke, great “resources of countenance.”

Among the more noticeable of the cases in which he has been engaged, may be mentioned the Black will case; the Harry Byrne will case, in which Matilda Heron was the contestant; the impeachment of Judge Hardy, 1862; the breach of promise case of Clark vs. Reese; the case of the People vs. Clark; the two trials of the Brotherton brothers, for forgery; and the two trials of Laura D. Fair for the murder of A. P. Crittenden; the case of Kalloch, indicted for the murder of Charles De Young of the *San Francisco Chronicle*; and the case of Spreckles, indicted for assault to murder M. H. DeYoung, surviving proprietor of the same paper.

The case of Clark vs. Reese was brought by a widow against, perhaps, the then richest man in the State. Campbell represented the plaintiff, and McAllister the defendant. Campbell managed it superbly, fighting at a great disadvantage. He made a fine argument, and gave McAllister a surprise he had not before experienced. The defendant, refusing to answer certain questions, Campbell moved for judgment against him for the whole amount sued for—\$100,000—and pressed his motion with ability and persistence. McAllister was compelled to ask an adjournment, which was granted him. The next day Reese answered the questions. The plaintiff recovered judgment for \$6,000, which was paid. Judge Campbell's fee was \$1,500. He was called into the case by John Lord Love, who was attorney of record, and who received a similar amount. The plaintiff got the residuum—\$3,000. She and her lawyers reversed Napoleon's maxim, “Divide and conquer;” they conquered and divided.

The case of the People against Captain Clark, of the ship *Sunrise*, was tried in the United States Circuit Court before Judges Sawyer and Hoffman in 1873. The defendant was charged with cruelty to his seamen. Some of his crew told harrowing tales. Great excitement pre-

vailed in the community. The proprietors of a San Francisco journal engaged General Barnes as special counsel to assist the United States District Attorney; Judge Campbell and Milton Andros defended. Judge Campbell's speech to the jury was published at the time. It shows what a brilliant advocate can say for a bad cause. The defendant was convicted, but the argument of his chief counsel was the most ingenious and powerful I have ever heard at the criminal bar, except that of the same advocate on the trial of Mrs. Fair. The case referred to of the Brotherton brothers was the most important forgery trial that ever occurred in California.

The Fair murder case has been touched in the chapter on Byrne. Laura D. Fair, a lawyer's widow, was twice tried in San Francisco on an indictment for the murder of a leading member of the bar—A. P. Crittenden.

— On the first trial, in 1871, Harry H. Byrne was District Attorney, and Elisha Cook and Leander Quint appeared for the defendant. The latter was convicted of murder in the first degree, and was sentenced to be hanged. She secured a new trial, and on the second trial, in 1872, D. J. Murphy was District Attorney, while N. Greene Curtis and Leander Quint represented the defendant. Between the two trials, Byrne on the one side, and Cook on the other—two of the best minds at the bar—had died. On both trials Alexander Campbell assisted the District Attorney in the prosecution. His speech to the jury on the first trial was reported *verbatim*, with all the proceedings, and published in pamphlet. This speech is worthy of study by the law student. It is in Campbell's best vein; is bold, argumentative, manly and powerful; shorter than any other of the four speeches in the case, but just long enough, and delivered, as is his custom, without notes. His fame as an advocate will rest chiefly upon this effort. It does not contain a single quotation from poetry or prose. It is entirely divested of foreign ornament, but in itself is polished, symmetrical, complete. It is distinguished for its impassioned invective against free love, its skillful analysis of the character of the defendant, and its dreadful anathemas upon her plea of insanity, which he declared to be "a defense shameless, disgraceful, and destitute of any element which could commend it to the heart or judgment of any honest man."

This veteran advocate is a man of lightning perceptions—courageous, forcible, impressive, apt at citation, plausible in his theories, clear and strong in thought and voice, and animated in delivery. He finds attentive hearers in his juries. He gives no thought to the arts and tricks of practised speakers. Seneca's precept seems to be ever before him—"Fit words are better than fine ones." Very rarely does he turn aside from the realm of reason to the domain of feeling, yet can he, and sometimes does, touch with rare skill, the chords of sympathy, and sound the depths of the soul. More than once have I seen warmth, earnestness and power breathe about him, as he poured

forth a copious flow of that clear language which has been well said "to spring spontaneously from definite and precise ideas." Before a jury his movements and gesticulation are unrestrained; his voice pleasant, yet not musical, and his expression clear and condensed. He is the most unaffected of men. No man has less vanity. He never courts the reporters—never, by glance or movement, does he betray a consciousness that he is observed. Always confident and intrepid, but not reckless, "he looks forward to a coming argument as to a delightful pastime"—as Shiel said of O'Connell.

It is recorded that the famous John Sergeant of Philadelphia, in addressing a jury, seemed to take the jury into his confidence, and to ask their confidence in return. One of his competitors said that Sergeant "virtually got into the jury box, and took part, as it were, in the decision of his own case." I have seen Alexander Campbell do this. He virtually shakes hands with each juror. But this habit of "getting into the jury box" is more successful when done "virtually"—in another word metaphorically—than when done in physical reality. Hon. W. W. Foote, since Railroad Commissioner, once put himself into the jury box in San Francisco—not "virtually" or metaphorically, but actually—and this is what became of him, as very cleverly reported at the time. It occurred during the trial of the widely renowned Jimmy Hope for burglary, in the Superior Court, T. W. Freelon, Judge.

Mr. Foote, in speaking for the defense, had not proceeded far before he was reminded by the court that he was transgressing a court rule. "How so?" he asked in surprise. "You are standing inside the jury box," replied his honor. "And I claim I have a right to stand anywhere I want to," rejoined the attorney. "But my order is that you cannot," came next from the court. "I must be near the jury. I cannot talk unless I am," the lawyer persisted. Then said the Judge, "There is a place for the court; the clerk and bailiff have their places, the counsel theirs, and the jury its place. That is my rule, and I must see it observed, in this case, as in all others." "But, your honor, so long as I have no means of harming the jury, and my intentions are honorable——" "I can make no exception," said the court, sternly. "But I except! We except, your honor!" shouted Mr. Foote, triumphantly, and a glad light stole into his eyes at the thought that there remained yet another chance to except, even after his argument was begun. But he had to stay outside the rail? Yes.

Alexander Campbell, Henry Edgerton and William Higby were counsel for the State on the impeachment trial of District Judge James H. Hardy, in 1862. The accused was removed from office. At the next session an act was passed, under which the counsel named were paid one thousand dollars each. A few years later Campbell and Hardy were associated as counsel for the defendant in an important criminal case.

In 1881, Judge Campbell removed to Arizona, where he soon put him-

self at the head of the bar, and disabused the popular mind of the idea that he was a legal specialist. After five years in that region, he came back over the California line, and settled at Los Angeles. He has been for many years the regular counsel of the proprietors of the San Francisco *Chronicle*, and that continued engagement has caused his conspicuous reappearance in the metropolitan courts from time to time. He is married and has two grown sons in San Francisco, one of whom follows his profession and bears his name as was observed of Judge Heydenfeldt.

CHAPTER XIII.

A Chapter of Pleasantries—Wit and Humor of Bench and Bar—Sallies of Judge E. D. Wheeler—Judge Stanly's Order to "Burn That Petition"—An Elaborate Conundrum—Characteristic Conduct of a Jury of Lawyers—A Constable With More Pomp Than Discretion—Anecdotes and Recollections of Ogden Hoffman, A. P. Van Duzer, Solomon A. Sharp, J. B. Townsend, M. C. Blake, William M. Zabriskie, C. T. Ryland, Joshua W. Redman, William Daniels, J. B. Murdock, and Others.

The law is reckoned a stern science; and it is certainly such to those attorneys who have not much to do. It is found to be tolerable by those whose tables are covered with fresh briefs of their own. Its jealousy, however, is proverbial. It has been called "an accumulating science" and those lawyers "accumulate" most who most propitiate it. It settles estates, dispenses fortunes, treats domestic woes, personal grievances, secures or denies individual liberty, affirms contracts, punishes crimes, upholds honor, protects life, sanctions death. But notwithstanding its solemn offices, it puts no mournful impress upon the hearts of its votaries—its humblest servants or its proudest ambassadors. The average lawyer is a man of good cheer. When his aspect is grave his heart is light. Often, on the trial of a weighty cause, the shafts of wit will fly, not alone between counsel, but between counsel and the bench. It would seem strange that a court-room could be the scene of merriment, considering the serious nature of the business there transacted. The fact is, however, that more genuine wit has been heard, more hearty laughter has been evoked, in crowded courts than in club rooms, dining halls or legislative assemblies. We like to laugh at the blunders of others, and the more solemn the occasion the more ludicrous appears the blunder. The court-room is pre-eminently the place for such things. It is either a witness, a juror, a clerk, a bailiff, a lawyer, or the judge himself—sometimes several of them together—to whom the mishap is due.¹

"Go and get me 5th Howard," said a distinguished San Francisco counselor one day in 1865, in the Fourth District Court. He was "distinguished" hardly more for his ability than for his eccentricity, and he stopped in his argument to address these words to his clerk. He wanted the case of *Nevitt vs. Natchez Steam Packet Company*, reported in 5th Howard's *Mississippi Reports*, page 196; but he simply told his clerk to "get 5th

Howard." Now, there are Howard's Mississippi Reports, Howard's New York Practice Reports, and Howard's United States Supreme Court Reports; and the clerk, when he had rushed, out of breath, into his employer's library, soon found on the shelf one 5th Howard, and clutching it hastily, returned to the court. But it was not Howard's Mississippi; it was a New York Howard. Taking the book from his clerk's hands, the counselor, bending over his memoranda, observed: "Your Honor, I will now read you the case of Nevitt vs. Natchez Steam Packet Company, reported in 5th Howard's Mississippi, page 196." Then he slowly opened his book, and turned to the page. Instead of being the case of Nevitt vs. Natchez Steam Packet Company, it was Herustein vs. Matthewson. Looking at the cover, he found it was a New York Report. "Your Honor," he said, "I sent my clerk for the authority I wanted, telling him distinctly it was 5th Howard's Mississippi, and he has brought me 5th Howard's New York Practice. I think he did this mean act with malice aforethought. My experience with law clerks is that they are fit for nothing but to draw their salaries and eat free lunches." He took a breath of relief, and proceeded with his argument, the court having made a note of the absent book.

The late Solomon A. Sharp, once State Senator, and who held other high honors in San Francisco at various times, and who enjoyed a fortune for many years before his death, was not noted for his alertness of movement. He was also inclined to procrastination, being seldom ready to try a cause until after several postponements. One day, in the Nineteenth District Court, Judge E. D. Wheeler presiding (I coupled these names on page 85), a cause, in which Mr. Sharp was for the defendant, was called for trial, and Mr. Sharp astounded the attorneys present, and especially the plaintiff's counsel, by promptly responding "Ready." He was eager for the fray that time, although the case had never been reached for trial before. This was something the plaintiff's counsel had not anticipated. That unhappy man urged a postponement as persistently as he could, but having no legal ground, he did not say anything to the point. Mr. Sharp insisted on a trial, saying his witnesses were in court, and he called attention to the fact that no legal excuse was presented by the other side for not being ready. Then Judge Wheeler came to the relief of the plaintiff's attorney: "Mr. Sharp, I never knew you to be ready before. The plaintiff's counsel could not have foreseen this exigency. You have taken him, as well as the court, by surprise. Let the trial be postponed for ten days." There was a general laugh, but Mr. Sharp declined to even smile until he got outside the court-room.

Judge Wheeler said many good things on the bench. His humor, which was of the quiet order, would peep out in his most important opinions. It was really entertaining to listen to him when he rendered a decision. In nine cases out of ten these were oral, and in many instances were delivered

without notes. They were certainly models in style, and manner of their rendition. He had all the facts in his memory, and weighed them calmly. His intonation was that of conversation in an assembly of friends. The mirth with which they were usually touched did not detract at all from their gravity, because introduced in happy illustration. It, of course, greatly heightened the pleasure of the listener. No judge whom I have ever heard render an oral opinion, not even Hoffman or McKinstry, was more lucid in exposition than Judge Wheeler.

"Gentlemen of the bar," said this judge on taking the bench one motion day, "only short arguments will be heard; motions will 'go over' very easily this morning. I want to 'go over' myself."

Judge J. B. Townsend, who had been practicing at this bar for thirty years, and who, while being recognized as an able lawyer, had, strange to say, very slow movements of mind, appeared before Judge Wheeler one motion day, and the motion calender being called, ten were answered ready. Usually, ten "ready" motions can be disposed of in one or two hours. But Judge Townsend had the first motion, and another "slow coach" was the opposing counsel. Some of the attorneys who had other motions began to leave the chamber.

"Are you ready, Judge Townsend?" Judge Wheeler inquired.

"Yes, your Honor," said Judge Townsend slowly.

"No other motion will be taken up to-day," Judge Wheeler remarked, and settled himself in his chair, the picture of resignation, or, like "patience on a monument, smiling at grief."

In the month of August, 1868, one Alfred Moulin was indicted by the grand jury of this city and county on nine indictments for libel, the parties defamed being Ogden Hoffman, Stephen J. Field, Delos Lake, Robert F. Morrison, Hall McAllister, George C. Gorham, George E. Whitney, Andrew B. Forbes and William F. Babcock. Now these are no diminutive names, it will be agreed. Moulin was a "crank," and the history of his long and strange experience in our state and federal courts, in admiralty, in criminal libel, in contempt, etc., would make quite a book. The nine indictments against him, for some unexplained reason, lay pigeonholed for nearly three years, the accused being on \$9,000 bail, when, on July 10, 1871, he appeared in the County Court, and made motions for the dismissal of all the indictments. In support of his motions he held in his hand a printed petition of formidable proportions, which, not being vain of his elocutionary powers, he requested the clerk to read. The clerk read:

To the Hon. John A. Stanly, Judge of the County Court in and for the City and County of San Francisco. The People of the State of California, plaintiffs, vs. Alfred Moulin, defendant. On nine indictments for libel. Petition and complaint. Your petitioner, Alfred Moulin, being duly sworn, respectfully represents: That he is the

defendant in the above entitled cases, and that he is and has been a resident of this city and county for the period of twelve years last past. That on or about the 28th day of August, 1868, Ogden Hoffman, Stephen J. Field, Delos Lake, Robert F. Morrison, Hall McAllister, George C. Gorham, George E. Whitney, Andrew B. Forbes, William F. Babcock, Henry H. Byrne, John Middleton and others, willfully, wrongfully, maliciously—

The Judge interrupted and said: "This is sufficient, Mr. Clerk. Burn that petition, and enter an order that the motion is denied, because the petition is couched in terms disrespectful to, and contemptuous of, the court and its officers."

The clerk obeyed promptly, tearing the petition into slips and throwing them into the stove.

In the United States Circuit Court, before Judges Sawyer and Hoffman and a jury, in 1873, in the course of the trial of Captain Clarke of the "Sunrise," for cruelty to sailors, the defense called a seaman to testify to the Captain's reputation for kindness and humanity. On cross-examination by General W. H. L. Barnes, the following was elicited:

"Did you ever hear Captain Clarke's reputation for kindness and humanity talked about on the Mary Bently? (A former vessel of Clarke's.)

"Yes."

"Whom did you hear talk about it?"

"Well, Tom, for one."

"Who was Tom?"

"A sailor. Don't know his full name."

"Did you hear anybody else talk about it?"

"Yes."

"Whom?"

"All the sailors."

"What did they say?"

"When I used to take them grub."

"What did they say?"

"They said it was good."

"What was good?"

"The grub."

Joseph Smith was arraigned at the opening of the term of the Municipal Criminal Court, San Francisco, November, 1872, on an indictment for burglary. Having no counsel, the court tendered him the services of Mr. Charles Aiken, which were accepted. When the case was called for trial, December 6, 1872, George W. Tyler appeared for the prisoner. Mr. Aiken addressed the court at some length upon the situation, concluding with this elaborate conundrum: "Can an impecunious prisoner, who has counsel appointed for him by the court, and who afterwards comes into possession of funds, throw off on the lawyer who was ready to defend him for nothing, and secure the

services of another by the payment of a comfortable fee?" An affirmative response from Judge Blake caused the counsel to withdraw, and Mr. Tyler started in to earn his "comfortable fee."

That is one of the ways in which the rights of American citizens are trifled with in this part of the country.

In the last named court, July 19, 1873, the case of a certain prisoner being called, and no response being made, the court said:

"Are the parties ready?"

"I am ready, your honor," said the Assistant District Attorney.

After a moment's silence the prisoner arose in the dock and said, "I am not ready, your honor. My best witness is out of the city, but will be here in a few weeks."

"Have you a lawyer?" inquired the Judge.

"Yes, your honor."

"Who is he?"

"Mr. Aiken," (above mentioned).

"Then you had better let Mr. Aiken speak for you," suggested the Judge.

Thereupon that counselor arose slowly and said, finely: "Your honor, I was appointed by the court to defend this man, but I have maintained silence to see if some 'shyster' would not claim the case. None having done so, I suppose the prisoner has no money, and that I will really have to defend him." The trial was then commenced.

In the San Francisco Police Court, August 28, 1869, a prisoner on trial for vagrancy introduced in defense a lawyer, who, among other things, testified that he had been counsel for the accused in establishing the latter's right to an estate in the Probate Court. He said that when he took hold of the estate it was worth \$1,600. He was asked how much the estate was worth when he got through with it. The question was objected to as being impertinent, and the objection was sustained.

In the Justice's Court, at San Francisco, 1866, the Justice being Mr. Alfred Barstow, since associated in law practice with Hon. A. L. Rhodes, ex-Chief Justice of the Supreme Court, an Irish woman brought suit against a wealthy man to recover a small sum alleged to be due for washing clothes. A jury being demanded by the defendant, it was agreed between counsel that the constable (Samuel C. Harding) should summon the jurors from the bystanders. The constable accordingly summoned his men from those in and about the court-room, and it so happened that every man cited was a lawyer. The return of the constable showed service upon D. J. Murphy, Samuel Platt, George J. Wight, Judson Haycock, Wm. M. Zabriskie and others, all lawyers. The legal aspect of the jury being discovered and alluded to by counsel for plaintiff, it was agreed by counsel for both parties that the jury

—the first twelve called—should be accepted, and each juror was pleased to waive his rights, feeling himself to be in familiar, if not good company. On the close of the examination of the first witness, who was the plaintiff herself, Mr. Zabriskie, who was a prominent criminal lawyer and foreman of the jury, took the witness in hand, and put about twenty questions to her, consuming some twelve or fifteen minutes. Then the legal juror next to Zabriskie imitated his example, and took nearly as much time. The other jurors in turn followed suit, until the poor woman had been exhaustively examined by twelve jurors, and two hours had been consumed. Another witness was called, and when the counsel in the case had got through with him, the impatient woman looked at her attorney and the jury with a look of appeal, but the relentless Zabriskie soon dashed her hopes by putting a hypothetical question, and as he awaited an answer he ran his fingers through his hair, pushed up his coat sleeve some inches, disclosing his immaculate cuffs, and by his manner generally betrayed the utmost satisfaction with the situation, and his indifference to the lapse of time. Then, as that and the next two questions were being put and answered, there was a whispered and somewhat excited conversation between the plaintiff and her counsel. Soon the latter arose, interrupted Mr. Zabriskie's examination, and abruptly spoiled the programme of the legal conspirators on the jury—thus:

"Your honor," said he, "as the defendant has employed able counsel and brought several witnesses into court to resist the plaintiff's demand, I have sent for additional witnesses myself, whose appearance I first thought unnecessary. I have seven witnesses altogether, and the defense may have as many. I make no objection to the jurors putting questions to the witnesses, but I do not think it is 'in accordance with the eternal fitness of things' to pursue such a course on this trial. Our demand is just but very small, and we have concluded to make the defendant a present of it rather than suffer the penalty of sitting here and seeing fourteen witnesses examined at the rate of three a day. Your honor will please dismiss the case at plaintiff's cost. I will pay the jury's fees out of my own pocket." As the plaintiff left the courtroom precipitately the Justice said, "The case is dismissed." The plaintiff's counsel stepped up to the jurors to pay their fees, and said: "Haven't you fellows any better business talent?" The jurors accepted the two dollars each, and sent the total to the plaintiff, who thus, out of her lawyer's money, came within one dollar of "getting even."

A certain "small farmer" near the town of Sonora woke up one fine morning, and found that the grass had been cut from an inclosed plot during the night. Going into town, he found some freshly cut grass in front of a hay dealer's premises, and had the hay dealer prosecuted for larceny. The accused, on his examination before the Justice of the Peace, showed that he

was on a ranch ten miles off when the grass was stolen. His counsel asked for his discharge.

"Go slow," replied the Justice. "Let him first show who did steal it."

"Your honor," said the counsel, "I will effect my client's release by habeas corpus. I never could get justice in this court."

"No, sir," replied the Justice. "You never shall have justice in this court, while I am here."

— In the Municipal Criminal Court, San Francisco, February 21st, 1873 (the Judge being M. C. Blake, who was Mayor ten years later), W. D. Sawyer, counsel for John E. Dunn, convicted of robbery, and arraigned for sentence, asked a postponement of sentence, to enable him to prepare an argument on a motion to vacate the verdict. He remarked, incidentally, that every one was presumed to know the law, but this was a fiction; it was well established that a great many do not know the law, and their ignorance was not their fault. Judge Blake conceded that no one knew the law—not even judges—except those on the Supreme Bench.

Thus will the gravest magistrate sometimes unbend. Judge Blake seemed, in his quiet way, to enjoy it, when the laughter of the lawyers present assured him that he had made a "palpable hit." The prisoner's counsel proceeded, and said something about his client having been neglected and deceived by his friends. District Attorney D. J. Murphy (interrupting): "The counsel cannot seriously hope to have the verdict set aside. He is, no doubt, appealing to time, in the hope of getting his fee in the case. I will not object to indulging him a while longer."

The passing of sentence was postponed for a few days, during which time the fee is thought to have been paid, as the motion to vacate the verdict was not further pressed.

Justice of the Peace Ford, of Martinez, who held that distinguished office at an early day, thought it essential to the dignity of his tribunal that it should be formally opened by constabulary proclamation. On one occasion the constable felt more than usually well, and opened court in these stirring accents: "Hear ye! Hear ye! the Honorable Justice's Court of Martinez is now open, pursuant to adjournment. Everybody will come to order, and everybody, whether they are plaintiffs or defendants, shall have fair play and an equal show!" The Justice called the constable to him, and officially rebuked him. "What do you mean," said he, "by such talk as that? What will become of my business if I give the defendant an equal show with the plaintiff. I am not safe with you here." Thereafter the constable's formula was shorter. Judge Dwinelle, of the old Fifteenth District Court, in whose district was Martinez, more than once told this story on Justice Ford, in presence of the latter, who always insisted however, that it was a base calumny.

In the case of somebody against John H. Moses, tried in the brave days

of old (about 1851) before Justice William Daniels, at San Jose, J. B. Murdock for plaintiff, Wm. T. Wallace (since Attorney General and Chief Justice); for defendant, the plaintiff obtained judgment, an erroneous entry of which led to a tedious complication. As was frequently done at that time in Justices' Courts, the judgment was written up by the attorney for the prevailing party. In this case, Murdock entered judgment against Moses Scott instead of against John H. Moses, his mistake arising from the fact that Moses Scott was a witness on the trial. Wallace discovering the error, informed the Justice that he would be sued for damages if the defendant's property should be sold on execution upon such a judgment. The Justice refused to issue execution, or to correct the judgment. In his despair Murdock concluded to appeal from his own entry. The appeal came before the County Court, Joshua W. Redman, Judge. Murdock had the court against him all the way through, being told that he could not take advantage of his own error. He left the court-room abruptly, with an expression of contempt. The court directed the bailiff to call Mr. Murdock back. In another minute Murdock entered the court-room, and approached the immediate precincts of the judicial presence, with hat against his breast, bowing and smiling, and marveling whether he would be lightly rebuked or heavily fined.

"You seem agitated, Mr. Murdock," said the justice. "I only called you back to remind you that there is an old proverb, which has been made one of the rules of this court. 'If a man burns himself, he may have to sit on the blister.' Good-day, Mr. Murdock."

And Murdock withdrew, with grave mien.

A certain rawbone Jack was once the rawbone of contention (replevin) in San Jose, in the court-room of William Daniels, J. P., an old Englishman, before mentioned, who had settled in that locality A. D. 1846. C. T. Ryland, since a leading banker, but long a prominent lawyer and politician, appeared for plaintiff, and Mr. Sanford, Santa Clara's first District Attorney, a fluent, flowery speaker, and a wit of no mean order, represented the defendant. Sanford was partially deaf. The evidence being all in, Ryland "waived the opening," whereupon, and while Sanford was arranging some papers, the Justice announced judgment for the plaintiff, and the Constable immediately delivered the animal to that party, who rode off upon him. Sanford, not hearing the words of the Justice, and assuming that they referred to Ryland's offer to waive the opening, arose with deliberation to speak. He had proceeded some few minutes, to the great amusement of his opponent, when the Justice stopped him and said:

"Mr. Sanford, there is no use in your arguing the case. I have already given the plaintiff judgment."

Sanford (with that look of disgust which too often is seen on the lawyer's face when subjected to judicial outrage)—"The — you say!"

"Come to order, sir. Court is about to try another case," said the Justice.

"Is this the truth?" asked Sanford, turning to Ryland.

"Yes; and my man has the mule two miles from here by this time," answered Ryland.

"Well, your honor," said Sanford recovering, "I would bow to your decision, if it were properly amended."

"How is that?" asked the Justice.

"My client," continued Sanford, is fond of the beautiful jackass which has been taken from him. If the plaintiff will return him, I will give him instead an animal of much more positive and prominent qualities in the assinine line—a very jewel of a jackass—that is, with your honor's acquiescence."

"Why should I acquiesce?" asked the Justice again.

"Because," said Sanford, "the jackass that I should deliver, is the astute judge of this court."

A severe fine was promptly imposed, but never paid. The matter was pleasantly adjusted the same day at a bar of a different sort.

A special policeman convicted of assault and battery, in striking a prisoner on the head with his club, not necessarily or in self-defense, appeared before the Police Court, San Francisco, August 29, 1873, to receive sentence. Colonel A. P. Dudley, his counsel, moved for a new trial, on the ground of newly discovered evidence. He made an earnest appeal for the intelligent consideration of the court on behalf of the officer, who, counsel said, had been misrepresented while endeavoring to perform faithfully his arduous and difficult duties. The counsel twisted off into a tirade against the Prosecuting Attorney, who, he said, had hunted down a fellow officer of the law—in this instance with a vindictive spirit. Said the Colonel, concluding: "Well might this excellent policeman exclaim, in the language of great Cæsar, when stabbed by the chief among his supposed friends in front of the Roman Capitol, *Et tu, Brute!*" The Prosecuting Attorney was partially stupefied with astonishment for a moment, and then a cloud of ferocious indignation overcast his classic features, as he sprang to his feet and demanded the protection of the court from such infamous abuse. His honor commanded the Colonel to arise, and show cause why he should not be punished for contempt in stigmatizing an officer of the court as a brute! The culprit was somewhat disconcerted, but managed to stammer out an apology, to the effect that the expression which had given offense was merely a Latin quotation, which he had heard some time in his school days, and was a mild rebuke uttered by Cæsar to his friend Brutus—whom he was accustomed to call Brute, in a jocular strain, for short—when the latter stabbed him in the back. Brutus was an eminent lawyer of old times, and an honorable man, and the compar-

ison conveyed in the quotation which had unfortunately wounded, was not intended to disparage his friend, the Prosecuting Attorney, for whom he entertained the most profound regard. (*sic.*) T. W. Taliaferro arose in support of the offending lawyer, and intimated that he was familiar with the circumstances referred to by Colonel Dudley, and that the remark attributed to Cesar was merely uttered in the manner of earnest inquiry. It might be literally translated, Who threw that last brick? The court remarked that the explanation was timely, full and satisfactory. The Prosecuting Attorney accepted it as complete, but he expressed his disapproval of the habit indulged in by some lawyers of dragging in *double entendre* quotations from the dead languages. This scene was reported at the time, and in reproducing it I have used most of the reporter's words.

"Your honor," said a witness on the stand in the Police Court of San Francisco, August 8, 1873, "the Prosecuting Attorney is trying to confuse me by surrounding my statement with legal vermifuge?"

"I think a little vermifuge will not hurt him, your honor," said the Prosecuting Attorney; "he is evidently trying to worm himself out of a fix," "If the attorney for the people," said the Court, "proposes to step from the domain of law into that of medicine, he will please not ask the court to furnish him with his first patient." "I'm through," said the people's advocate, and the witness left the stand.

In 1853, Colonel James once defended in the San Francisco Court of Sessions—T. W. Freelon, Presiding Judge—a man charged with assault with a deadly weapon. The accused and the person assaulted were both Irishmen. They having been old acquaintances, and their families being neighbors, their friends negotiated a treaty between them, which they ratified. It was agreed that the complaining witness would be as light as possible in his testimony, and the whole prosecution, so far as the witnesses were concerned, was decidedly weak. "Patrick," said Colonel James to the complaining witness, "now, didn't you tell the defendant here before he struck you, that he was a d—— Irish ———?" "Faith," answered Patrick, "and I did not. How could I, when I'm one myself?"

In the early days of San Francisco, Joseph Hetherington shot and killed Dr. Baldwin, on an open lot at North Beach, in a dispute about their rival claims to the land. He escaped conviction, but afterwards, having killed another physician—Dr. Andrew Randall—in the bar-room of the St. Nicholas Hotel, July 24, 1856, he was hanged by the Vigilance Committee one month later. When he was tried for the murder of Dr. Baldwin, Harry Bryne became District Attorney. In his closing speech for the prosecution, Bryne became very animated and severe. He expressed regret that no witness had been found who could give an exact recital of the circumstances and manner of the killing. "O, that Dr. Baldwin were here!" he exclaimed, looking fiercely at

Hetherington. "O that for one hour he could have revival from the grave, and tell us of the deep damnation of his taking off! O that I could call Dr. Baldwin!"

The court bailiff, who was usually half asleep, was roused from his lethargy by Bryne's ringing tones, and catching only the words "call Dr. Baldwin," promptly opened the door, went outside, and cried out: "Dr. Baldwin! Dr. Baldwin! Come into court!" Then stepping back into the court-room, he announced, "There's no answer!" A solemn stillness pervaded the chamber as the bailiff made this strange invocation to the grave, but when he returned and said, "There's no answer!" the scene presented an aspect so ludicrous that even Bryne, who had been interrupted in the heavy part of his work, had to cast the shadow from his brow, and join in the general glee.

Judge Ogden Hoffman has been on the bench of the United States District Court in San Francisco for *thirty-seven consecutive years!* He is of a distinguished family, son of a great lawyer, has a fine mind, received an excellent education, and, when we consider the length of his judicial tenure and the stirring period in which it has been cast, we see how large a theme the local historian must find in his career. I will only tell now one thing of him, and it will be at the expense of the Hon. A. P. Van Duzer. Mr. Van Duzer was then Assistant United States District Attorney, an efficient man in that place; indeed an efficient man at the bar, as well as a public speaker of no mean powers. Enjoying the respect of his professional brothers, he yet supplies them with amusement, at times, by his peculiarity of speech, manner and habit. Mr. Van Duzer was prosecuting before Judge Hoffman and a jury, a man indicted for selling unstamped matches. He seemed more than usually anxious to convict his man. His voice was loud, his sentences rolled out upon each other in pell-mell succession, his gesture was fierce, his eyes were on fire, his whole aspect inspired fear. Standing on tiptoe, with his right hand lifted on high, and his shirt collar unbuttoned, he reached the climax of his wrath: then, descending, as it were, from the empyrean to the dull earth again, he brought his clenched fist down upon the table with an energy that seemed to come from more than mortal power. The whole jury shuddered. The table cracked, the pyramid of books toppled over, hats were hurled to the floor, and the inkstands emptied their contents, as if in black wrath, into the lap of the defendant.

Just then, Judge Hoffman in a spirit of mercy, interfered. "Mr. Van Duzer, he said, "do you think that your argument has been helped by these extraordinary exploits? If you imagine that *noise* is an element of argument, I wish you would send out and get a Chinese gong; I would prefer to hear that." Mr. Van Duzer said he was through, and the case was given to the jury.

